

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF LABOR AND INDUSTRY
WORKERS' COMPENSATION OFFICE OF ADJUDICATION

DAYVED WOODARD
2115 West 32nd Street
Erie, PA 16508

CLAIM PETITION

CLAIM NO. 2607372

vs

PHB
7900 West Ridge Road
Fairview, PA 16415

and

ROYAL & SUN ALLIANCE
P.O. Box 4701
Syracuse, NY 13221

BEFORE: JUDGE CARMEN LUGO
3400 Lovell Place
Erie, PA 16503

DATE AND PLACE OF HEARING:
JANUARY 27, 2005
3400 Lovell Place
Erie, PA 16503

APPEARANCES:

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NONE	
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1 P R O C E E D I N G S

2 THE JUDGE: This is the time set
3 for a third hearing in the case of
4 Dayved Woodard versus PHB. The
5 claimant is present and is
6 represented by Attorney Wayne
7 Johnson, Jr. Here on behalf of the
8 employer and its carrier is
9 Attorney Melissa Petersen.

10 Pending before me is a claim
11 petition regarding an alleged date
12 of injury of January 1, 1999.

13 Attorney Johnson, you indicated
14 that you would have several
15 witnesses today?

16 MR. JOHNSON: That's correct,
17 your Honor.

18 THE JUDGE: Who do you wish to
19 call first?

20 MR. JOHNSON: I would call
21 Chris McCullum, who's outside. May

1 I grab him?

2 THE JUDGE: You may. Raise your
3 right hand. Please have a seat.

4 Keep your voice up so the court
5 reporter can hear you. Please
6 answer all questions verbally.

7 THE WITNESS: Okay.

8 THE JUDGE: Attorney Johnson,
9 you may proceed.

10 MR. JOHNSON: Thank you, your
11 Honor.

12 * * *

13 **CHRISTOPHER MCCULLUM,**

14 called as a witness on behalf of the
15 Claimant, and having been previously
16 duly sworn, was examined and testified
17 as follows:

18 **DIRECT EXAMINATION**

19 BY MR. JOHNSON:

20 Q Mr. Johnson, could you please state your
21 full name for the record and spell your

1 last name.

2 A Christopher J. McCullum, M-c-C-u-l-l-u-m.

3 Q What is your address, sir?

4 A 3402 Regis Drive.

5 Q Now, Mr. McCullum, have you ever met the
6 claimant, Dayved Woodard, before this?

7 A No, just before.

8 Q You don't remember him from when you
9 worked at PHB?

10 A No, no, I don't.

11 Q When did you work at PHB?

12 A I started in June of 2000 and worked all
13 the way until September of 2000.

14 Q How did you come to be aware of any
15 lawsuits or litigation between Mr.
16 Woodard and PHB?

17 A I was reading it in the *Daily Times*, the
18 newspaper, read the ad.

19 Q When you say ad, was there an ad or was
20 it an article?

21 A It was an article and called the editor

1 and got some information on the lawyers
2 that were handling it because it was like
3 going through the same thing I was going
4 through.

5 Q So what did you do? Did you contact the
6 lawyer?

7 A Yes, I did. We talked several times,
8 several times. We actually even met
9 several times.

10 Q Do you recall who that attorney was?

11 A Jeff Connally, I believe.

12 Q Why did you contact Attorney Connally?
13 What was your motivations or reasons?

14 A Well, like I said many times, if you took
15 Dayved's name out and put my name on it,
16 it would be the same thing and it was
17 just a big deal, you know, I'm shocked.
18 As a matter of fact, I was at work at the
19 time I was reading it and I'm like, wow,
20 you know, I had to call somebody, you
21 know, and tell somebody that already

1 knew, I had told somebody this before and
2 it's like, wow, you should call the
3 lawyer and maybe you can be a help, you
4 know.

5 Q All right. So you did not know Mr.
6 Woodard?

7 A No. no.

8 Q Well, let me ask you this, you said you
9 could have put your name in for his in
10 the article that you read in the *Erie*
11 *Daily Times.*

12 A Um-hmm.

13 Q Could you go through any instances you
14 personally had with PHB for the Judge.

15 A You got time? I could start from day
16 one. I remember getting hired, talking
17 to the manager, he was like we are going
18 to hire you as a "B" operator. I said
19 okay. And he said I want you to meet the
20 third shift foreman, I said okay. I
21 already had the job. The foreman took me

1 around and he kept questioning me, do you
2 really want this job, you know, are you
3 really going to come, you know, like, I'm
4 like, yeah, I need a job, I need to make
5 money, are you really, you know, he was
6 almost gave me a whole new interview,
7 like you're not supposed to have this
8 job, you know. Well, I'm like I already
9 got the job. Well, I really want to
10 start you off as a "C" operator. I don't
11 know why they want to start you off as a
12 "B".

13 Q Could you tell the Judge what the
14 difference is between a "B" and a "C"
15 operator?

16 A There was -- it's more technical things,
17 you can read blueprints, you can do your
18 own set-up work and things like that. A
19 regular "C" operator is just an operator
20 and also the pay rates --

THE JUDGE: You guys need to

1 keep your voices down. If you're
2 going to talk, you need to leave
3 the room. Do you understand?
4 Thank you.

5 THE WITNESS: And also the pay
6 is lower. "B" I think it was like
7 50 cents extra or something like
8 that.

9 BY MR. JOHNSON:

10 Q Do you recall who that supervisor was?

11 A No, I can't.

12 Q What other incidents did you have?

13 A Well, the biggest one was, you have a 90-
14 day probation and they're supposed to let
15 you know if you're doing good or doing
16 bad before that 90 days. According to
17 the foreman, I was just so terrible, I
18 was just horrible. Now, the 90 days, it
19 had been over 90 days, you know, and he
20 said you're horrible, horrible, horrible,
21 I don't think you should work here no

1 more and all this other stuff because you
2 had an incident. Well, the incident
3 happened where a machine they had me run
4 that was supposed to be had a shutdown,
5 it should have had a shutdown tag on it,
6 but it didn't, the machine was throwing
7 parts out. You stick parts into the
8 chuck and when the machine starts up, it
9 shot the parts out. Now, it had already
10 been down, but they put me on the machine
11 and when it crashed, they blamed it on
12 me, oh, you tore up the machine. The
13 third shift foreman just went off, oh,
14 this ain't going to look good on your
15 record, this is just so terrible. But I
16 talked to the operator that normally runs
17 it on first shift and she said that
18 machine has been down for days, Chris.
19 Then I asked the second shift foreman.
20 He said, yes, it's been down, you know,
21 and I did write a note to your third

1 shift foreman and, you know, the foreman
2 never came up to me and said, Chris, I'm
3 sorry, I apologize, the machine was
4 broken down, never said nothing. This
5 machine could have killed me, I mean the
6 parts in there weigh at least about a
7 pound and they were spitting out. He
8 knew it, but, you know, that was just
9 another incident. Any machine I was
10 running, he would do that. He would put
11 me on machines that were broke down and
12 then when it breaks down, he'll say, hey,
13 you know, you broke the machine, but the
14 machine was already having problems. It
15 wasn't my fault.

16 Q Did you ever personally hear any racial
17 slurs?

18 A Not to my face, not to my face. Only
19 thing I heard --

20 MS. PETERSEN: I'm going to
21 object if he's going to have

1 hearsay.

2 THE WITNESS: The only thing --

3 THE JUDGE: Wait, wait. When

4 there's an objection, you need to
5 stop talking so I can address the
6 objection.

7 THE WITNESS: Okay.

8 THE JUDGE: And the questioning
9 asked you, I want you to repeat the
10 question, are you specifically
11 asking for firsthand knowledge of
12 racial slurs, that means someone
13 said something to you, not that you
14 heard that somebody said something.

15 THE WITNESS: A guy approached
16 me and he said --

17 THE JUDGE: Who's the guy?

18 THE WITNESS: I can't think of
19 his name.

20 THE JUDGE: Was he a co-employee
21 or management?

1 THE WITNESS: He was coworker.

2 THE JUDGE: Thank you.

3 THE WITNESS: He came up to me
4 and he said --

5 MS. PETERSEN: I'm still going
6 to object then.

7 THE JUDGE: Sustained, hearsay.
8 You can't tell us what somebody
9 else said.

10 THE WITNESS: No, I'm about to
11 finish it.

12 THE JUDGE: Yes, but if you said
13 a guy came up to me and said that
14 would be hearsay. You can't tell
15 me what he said to you.

16 THE WITNESS: I can't tell you
17 what he said to me?

18 THE JUDGE: No, not unless you
19 know his name.

20 THE WITNESS: I don't know.

21 BY MR. JOHNSON:

1 Q Were there any other incidents that you
2 felt were discriminatory against
3 yourself?

4 A Yes. Wow, I mean you could be having a
5 conversation with an individual and
6 they'll say things like, Chris --

7 MS. PETERSEN: I'm going to
8 object. This is hearsay as well.

9 THE JUDGE: Sustained. You
10 can't tell us what other people
11 said unless you can identify who
12 they are because the other side
13 wouldn't have an opportunity to
14 cross-examine or call that
15 individual as a witness to verify
16 your testimony.

17 THE WITNESS: Well, it's just
18 really hard --

19 THE JUDGE: I understand, but
20 those are the rules.

21 THE WITNESS: It's so long ago.

1 THE JUDGE: I don't blame you.

2 Those are the rules and I have to
3 sustain the objection so you can't
4 say anything.

5 THE WITNESS: There were stares,
6 you could be doing your job, and
7 people that didn't even have no
8 business in your area, was hawking
9 over you, you know, just like I'm
10 doing with you right now, making
11 you feel very uncomfortable because
12 it's like, well, you know, what did
13 I do wrong. Am I doing something
14 wrong? No, it's nothing. I just
15 want to stare at you. Now, these
16 are not set-up guys or anything
17 like that, just regular coworkers.

18 BY MR. JOHNSON:

19 Q Are these your coworkers?

20 A These are just regular coworkers.

21 Q Did you ever make any complaints to any

1 supervisors?

2 A Oh, yes, several times.

3 Q Do you recall what supervisors you made
4 the complaints to?

5 A No, just the hiring manager and the tool
6 shop, that's all.

7 Q Do you recall what the specific
8 complaints were that you made to them?

9 A Mostly was I'm asking for help, I'm not
10 getting it, you know, they're trying to
11 blame that I'm tearing up the machines
12 when the machines are already tore up.
13 Some of the set-up guys refused to do
14 anything for me, you know, even though
15 I'm asking for help, they didn't want to
16 give me no information, no nothing.

17 Q What is a set-up guy?

18 A A set-up guy is basically just a guy who
19 comes in and sets up the machine. If
20 it's a problem that you can't handle,
21 they come in and fix it for you. If it

1 goes past your job call, they come in and
2 do like maintenance work, things like
3 that.

4 Q Set-up would be, could you describe to me
5 what set-up means? Are you setting up
6 the machine to run it?

7 A To run it, for example, like you have a
8 machine that's down, it's not working no
9 more, it's not my qualifications to fix
10 this. I got to get somebody else on a
11 higher level than me to come in. It's
12 almost like a supervisor comes in and he
13 repairs it. When he would repair it, I
14 mean, you know, a couple times it would
15 break down again, you know.

16 Q Any other complaints you made to your
17 supervisors?

18 A The only complaint was basically the one
19 about when it was time for them to do my
20 review and different incidents that came
21 up, I mean it was like several incidents

1 as far as the machine not working right
2 and blaming it on me, the different
3 stares, the insults, things like that
4 coming from foreman and the set-up guy
5 and different coworkers.

6 Q When you made these complaints to your
7 supervisors, was anything done to address
8 your concerns?

9 A Well, they were apologetic, they
10 apologized, the manager, I remember he
11 was saying, he was very --

12 MS. PETERSEN: I'm going to
13 object unless he identifies who
14 this is.

15 THE JUDGE: Do you remember the
16 names of anybody?

17 THE WITNESS: No, I don't. I
18 put those people in the back of my
19 mind.

20 THE JUDGE: Objection sustained.

21 MR. JOHNSON: Thank you.

1 BY MR. JOHNSON:

2 Q Your testimony is you worked at PHB from
3 approximately June through September of
4 2000?

5 A Right.

6 Q What was your reason for leaving?

7 A The hassle, I mean I felt uncomfortable,
8 I mean, you know, you felt like, you
9 know, something bad is going to happen to
10 you and these people don't care. I felt
11 unsafe, I started looking for another
12 job, and I got out of there.

13 Q When you say you felt unsafe or
14 uncomfortable, what was your basis for
15 feeling that way?

16 A Well, I mean, you know, talking to the
17 foreman and asking for help and not
18 getting it, complaining about different
19 things that were going on, the stares,
20 the comments, you know, I'm here to do a
21 job. The only thing I care about is I can

do this job, make my money, and go home.

2 I don't need the outside things. I don't
3 care what color your son-in-law is. So
4 what, we're the same color. I don't care
5 about that. I'm just here to do a job.

6 The stares, I mean from people that
7 didn't have any business in my area, from
8 coworkers, you know, not getting
9 information that I needed to do my job
10 the right way.

11 Q Were there any other black employees
12 working at the same time you were?

13 A Not on third shift, no.

14 Q So you were the only black employee?

15 A Black machine operator at the time, yes.

16 Q And do you feel that you were treated
17 differently than your coworkers?

18 A Oh, yes, I do.

19 Q What were the reasons for that?

20 A Well, like I said, anytime you needed
21 help, there was no help. You felt like

1 you were by yourself, like, okay, we're
2 not going to give him no help, we're
3 going to watch him fail so we have a
4 reason to get rid of him, that's how I
5 felt and that's how it was. You felt
6 like you were lost and by yourself there.

7 MR. JOHNSON: That's all the
8 questions I have.

9 THE JUDGE: Cross-examination.

10 * * *

11 **CROSS-EXAMINATION**

12 BY MS. PETERSEN:

13 Q Mr. McCullum, what division did you work
14 at at PHB?

15 A The tool division.

16 Q Where is that in relation to the die cast
17 division?

18 A I believe that's like almost, I want to
19 say blocks, but it looks like fields
20 between areas.

21 Q So it's an entirely separate area?

1 A Yes.

2 Q And during the time you worked at PHB,
3 you never had occasion to go to the die
4 cast division?

5 A No.

6 Q So you didn't ever meet with Mr. Woodard
7 before today?

8 A No, no.

9 Q And you never saw him working?

10 A No, no, no.

11 Q You never saw any of his supervisors or
12 coworkers --

13 A No, no.

14 Q -- talking with him or anything like
15 that?

16 A Hmm-um.

17 MS. PETERSEN: Judge, I'm just
18 going to object to Mr. McCullum's
19 testimony in his entirety. I don't
20 think it has any relevance on what
21 Mr. Woodard has testified to. I

1 don't think it has any basis for
2 abnormal working conditions that's
3 specific to Mr. Woodard.

4 THE JUDGE: At this time, I'm
5 going to overrule your objection.

6 MS. PETERSEN: Okay.

7 THE JUDGE: I'll let you brief
8 it.

9 BY MS. PETERSEN:

10 Q Now, you said you don't remember any of
11 your supervisors or coworkers that had
12 made these comments to you?

13 A No.

14 Q You were there for approximately three
15 months?

16 A Yes, a little bit more, a couple days
17 more.

18 Q Were you a member of the union when you
19 were there?

20 A No.

21 Q So you didn't make any complaints to the

1 union?

2 A Hmm-um.

3 Q Was that because you were within your
4 trial period?

5 A Yes.

6 Q You left before the end of the trial
7 period?

8 A Right, right, um-hmm.

9 Q What happens during the trial period?

10 A Well --

11 Q For you.

12 A -- for me, it's like they test you to
13 make sure you can do the job, you know,
14 and from what the manager -- according to
15 the manager, less than 30 days, if you're
16 doing terrible in 30 days, you're out.

17 This went on, you know, I was there for
18 the whole 90.

19 Q So that 90 days is the trial period?

20 A Yes.

21 Q During this period, you can be terminated

1 for whatever reason?

2 A Right.

3 Q And after that is when you go through the
4 union and have a grievance process and
5 everything?

6 A Right.

7 Q And did you just work third shift at the
8 time you were there?

9 A Third shift.

10 Q What hours of the day was that?

11 A From 11:00 to 7:00.

12 Q 11:00 p.m. to 7:00 a.m.?

13 A Yes.

14 Q And how many days a week?

15 A Five, Monday through Friday.

16 Q So you're full-time?

17 A Well, starts Monday night.

18 Q Sunday night to Thursday night?

19 A Yes.

20 Q You don't remember your set-up guys or
21 anything like that?

1 A No, hmm-um.

2 Q Do the people in the division that you
3 worked, the tool division, I guess?

4 A Right.

5 Q Are they union members or is this a non-
6 union area?

7 A I wouldn't even remember.

8 Q Did anybody ever make physical threats
9 against you?

10 A No.

11 Q Did you ever see any racist remarks in
12 the restrooms there when you were there?

13 A No.

14 MS. PETERSEN: All right, that's
15 all I have. Thank you, Mr.

16 McCullum.

17 THE JUDGE: Follow-up?

18 MR. JOHNSON: Just a few
19 questions, your Honor.

20 * * *

21 **REDIRECT EXAMINATION**

1 BY MR. JOHNSON:

2 Q Mr. McCullum, you were in the tool
3 division?

4 A Right, right, right.

5 Q And if you know, is the tool division and
6 the die cast division both divisions of
7 the same company?

8 A Yes.

9 Q And are they located in the same general
10 area? Let me ask you, there's separate
11 buildings?

12 A Yes.

13 Q Are they located on the same street?

14 A Yes.

15 Q The same property?

16 A Yes.

17 Q Now, you talked about probationary
18 periods?

19 A Um-hmm.

20 Q And I think you testified that there was
21 a 90-day period?

1 A Right, right, right.

2 Q Now, you were also talking about a 30-day
3 period, but I don't think you finished
4 what you were saying.

5 A Well, the manager, the big thing after
6 was after the 90-day probation, the
7 foreman, he ran down a list of things, he
8 said I was making the other employees
9 uncomfortable, I was doing this, I wasn't
10 doing the job right, wasn't making rate,
11 I was just horrible, and the manager
12 looked at him, well, if you're having all
13 these problems with Chris, why didn't you
14 let him know and he said, the foreman
15 said --

16 MS. PETERSEN: I'm going to
17 object to what the foreman said.

18 THE JUDGE: I'm going to allow
19 it. Go ahead.

20 THE WITNESS: The foreman said
21 he should have known he was going

1 to get fired after the 90 days and
2 I'm like, wait a minute, I thought
3 I was doing good because nobody
4 never complained about me and the
5 manager, his response was, the 30
6 days, if you wasn't productive,
7 wasn't doing what you were supposed
8 to in 30 days, he should have fired
9 you right then. He should have
10 told you something. Waiting for
11 this 90-day period and that you
12 were a bad employee, you should
13 have --

14 BY MR. JOHNSON:

15 Q Just so I'm clear, you worked from June
16 to September of 2000?

17 A $U_m = h_{mm} \dots$

18 Q Was it more than 90 days or less than 90
19 days?

20 A It was a little bit more than 90 days
21 when I left, but --

1 Q Had you completed your probationary
2 period?

3 A Yes.

4 Q Had they told you that you had completed
5 your probationary period?

6 A Yes, and the thing about it, if I hadn't
7 had that meeting with them about the
8 treatment that I was getting, they
9 probably would have fired me if I hadn't
10 spoke up.

11 Q Did you have a meeting at the end of your
12 probationary period?

13 A Yes, as a matter of fact, this was the
14 day after that it happened because the
15 manager, the foreman, he would bring you
16 in and tell you the different things, you
17 know, give you a list of the problems he
18 has with you and after he gave me this
19 list and told me what he thought, I was,
20 like, no, hmm-um, that ain't how it went
21 down. I don't appreciate this. I'm

1 going to the manager and that's when we
2 had the big meeting and in the meeting,
3 it was a set-up guy, the foreman, and
4 also the hiring manager, and myself.

5 Q But that was at the end or the completion
6 of your 90-day probationary period?

7 A Right.

8 Q And you were not terminated?

9 A No, no, because after the manager heard
10 the different things, he was more upset
11 with the foreman and he apologized to me.

12 He says, is there any problems, Chris?

13 Do you want something done? I just
14 wanted a job, you know, and I wanted to
15 be treated equal.

16 Q And shortly after, you left your
17 employment with PHB?

18 A Um-hmm.

19 O Is that correct?

20 A Yes. Probably two, three weeks after, I
21 ended up getting hired from another job.

1 Q You weren't fired, you quit your job?

2 A I quit.

3 MR. JOHNSON: That's all the
4 questions I have, your Honor.

5 * * *

6 **RECROSS-EXAMINATION**

7 BY MS. PETERSEN:

8 Q Mr. McCullum, just to clarify, the people
9 that worked in the tool division are
10 entirely different people than work in
11 the die cast division; correct?

12 A Yes.

13 Q People don't intermingle?

14 A Merge, no.

15 Q So you would have completely different
16 supervisors, coworkers, set-up guys, than
17 people in the die cast division?

18 A Correct.

19 MS. PETERSEN: That's all I
20 have.

21 THE JUDGE: Thank you, Mr.

1 McCullum. You may step down.

2 You're free to leave.

3 THE WITNESS: All right.

4 THE JUDGE: Next witness,

5 Attorney Johnson?

6 MR. JOHNSON: Your Honor, that

7 is the only witness I have. I had

8 subpoenaed Kerry Goodwine, who was

9 going to be my other witness. I

10 received a phone call two days ago

11 from Attorney Jeff Connelly, who

12 represents Mr. Goodwine in a

13 discrimination suit. Mr. Goodwine

14 hired in the last month or so by GE

15 and is in his probationary period

16 where he can't miss a day of work

17 for 90 days and he is not going to

18 be here. I was wondering if I

19 would be able to take his

20 deposition to submit?

21 THE JUDGE: Any objection?

1 MS. PETERSEN: No, that's fine.

2 THE JUDGE: Then you may proceed
3 by deposition.

4 MR. JOHNSON: Thank you, your
5 Honor.

6 THE JUDGE: Is that going to be
7 your only other witness?

8 MR. JOHNSON: That's my only
9 other witness.

10 THE JUDGE: All right. Ms.
11 Petersen, you identified several
12 witnesses. I assume they're here
13 today?

14 MS. PETERSEN: Yes, your Honor.

15 THE JUDGE: Call your first
16 witness.

17 MS. PETERSEN: I would call Mr.
18 Ronald Sayers.

19 THE JUDGE: Are all these
20 individuals going to be testifying?

21 MS. PETERSEN: Yes.

1 THE JUDGE: I would ask that
2 they be sequestered.

3 MS. PETERSEN: Okay.

4 THE JUDGE: Anyone who is going
5 to testify needs to go out in the
6 lobby and we'll call you as you're
7 needed. The two others in the
8 back, are they not testifying?

9 MS. PETERSEN: They are not
10 testifying.

11 THE JUDGE: Thank you. Raise
12 your right hand. Please have a
13 seat and keep your voice up so the
14 court reporter can hear you.

15 THE WITNESS: Okay.

16 THE JUDGE: Attorney Petersen.

17 * * *

18 RONALD SAYERS,

19 called as a witness on behalf of the
20 Employer, and having been previously

1 duly sworn, was examined and testified
2 as follows:

DIRECT EXAMINATION

4 BY MS. PETERSEN:

5 Q Please state your full name for the
6 record.

7 A Ronald Reed Sayers.

8 Q By whom are you employed currently?

9 A PHB Die Cast.

10 Q What is your title there?

11 A I am shift supervisor.

12 Q How long have you been shift supervisor
13 there?

14 A I've been shift supervisor since 1997.

15 Q And how long have you been employed by
16 PHB total?

17 A I'm in my twenty-eighth year at PHB.

18 Q And are you familiar with the claimant in
19 this case, Mr. Raymond Woodards?

20 Λ yes I am

21 Q How are you familiar with him?

1 A Just through working with him.

2 Q Were you once his supervisor?

3 A Yes, ma'am.

4 Q Were you a direct supervisor to him,

5 meaning he reported directly to you?

6 A Yes, to my foreman and myself, yes.

7 Q Who was your foreman?

8 A I had four different foremen underneath

9 me.

10 Q Okay, we can get to that later. Now, Mr.

11 Woodard had, I believe, worked for PHB

12 from 1998 to 2003; is that your

13 understanding?

14 A Yes.

15 Q And did he work a particular shift do you

16 recall?

17 A Mostly second shift.

18 Q What hours was that?

19 A In his classification, it would be 2:40

20 to 10:40.

21 Q 2:40 p.m. to 10:40 p.m.?

1 A Yes.

2 Q And did you work on the same shift as Mr.
3 Woodard?

4 A Every other week, I rotate.

5 Q Okay. How did you rotate your shift?

6 A I swing shift. One work I work first
7 shift and one week, I work second shift.

8 Q And as the shift supervisor, what were
9 your duties?

10 A My duties is to overlook the whole
11 department, assign people to machines,
12 make sure people are there, any important
13 jobs with the machinery as far as getting
14 them out on time, I'm in charge of
15 anything that goes on in the whole
16 department.

17 Q What department is that?

18 A Aluminum die cast.

19 Q How many people work in the department
20 during one shift?

21 A During one shift.

1 Q A range.

2 A Probably between 40 and 50, all depending
3 on how busy we are at the time.

4 Q And you supervise all those people?

5 A Yes, ma'am.

6 Q What type of work is done in that
7 department?

8 A It's like foundry. It's molten metal,
9 making aluminum die cast parts.

10 Q You make aluminum parts?

11 A Yes.

12 Q What types of machines are in that
13 department?

14 A Mostly die cast machines, then there is
15 some secondary machines in there, punch
16 presses. Once in a while, there will be a
17 drill press or something for secondary
18 work.

19 Q Okay. So there's 40 to 50 people working
20 there at one time. Does everybody have
21 their own machine or how does that work?

1 A No, they get moved around from machine to
2 machine. There's different
3 classifications. You're DCPOs run the
4 machines, I have operators that run hand
5 machines. The DCPOs, they start the
6 machines up and everything and then
7 they're responsible for everything in
8 that work cell. Then I also have a metal
9 man and the foreman and everything that
10 I'm in charge of.

11 Q How many different machines in the same
12 department, in your department?

13 A Die cast machines at that time, we had
14 about 30 machines.

15 Q And do all the people in the department
16 work all the machines at any given time
17 or are certain people assigned to certain
18 machines?

19 A They can run any given machine on any
20 given day.

21 Q Okay. Now, can you explain the procedure

1 of how people are assigned to certain
2 jobs, certain machines?

3 A Well, as far as the procedure, they're
4 just assigned a machine.

5 Q When a job comes in, you get an order or
6 if you can start from the beginning?

7 A Well, when a brand new order, it will be
8 assigned --

9 THE JUDGE: This is not a
10 regular work injury. Why are we
11 going through the job duties?

12 MS. PETERSEN: Because I think
13 he did complain about his job
14 assignments.

15 THE JUDGE: Well, job
16 assignments is one thing.

17 MS. PETERSEN: I wanted to go
18 through the procedure of how people
19 are assigned to their specific jobs
20 because I think he had testified
21 that he was assigned to all the

difficult jobs or a lot of difficult jobs.

THE JUDGE: All right, I'll
show it.

BY MS. PETERSEN:

Q You can continue.

A job will come down, it will be lined up, put in a machine, then when that machine is ready to start up, anybody that's available at that time will be assigned that machine. A lot of times, if your machine finishes or whatever, because they go by priorities, we have the fourth job and it goes right down the list, and if your job finishes or is up on the priority list, when that machine starts up, then you'll be moved to that machine.

Q Okay. So if you are working on a certain machine and it was lower on the priority list and then what if somebody calls off

1 that has a higher job on the priority
2 list, then what happens?

3 A What happens then is if somebody calls
4 off and they're on a more important job,
5 then we'll look at the list and go to the
6 least priority machine and move that
7 individual to fill the higher priority
8 machine.

9 Q Does it matter who the individual is?

10 A Absolutely not.

11 Q It's the priority, you said?

12 A Priority machine, right.

13 Q Now, are you given deadlines to complete
14 the jobs then?

15 A Well, there's a deadline when we start
16 running the job, then however long it
17 takes to finish that job unless something
18 else more important comes up and we have
19 to take it out.

20 Q Okay. Now, you said you were responsible
21 for assigning jobs to employees and

1 machines to employees?

2 A Yes.

3 Q Were you the only one that was
4 responsible for assigning jobs or anybody
5 else?

6 A No, there's shift supervisors on the
7 other shift. Like I rotate, I have a
8 partner that's on the opposite shift of
9 me, he's on second and vice versa. He
10 assigns jobs, also. Then we have three
11 dispatchers that are taken care of
12 anything that has to do with people in
13 that department as far as moving them
14 around or when people call off, they get
15 a hold of one of us and we'll switch
16 people around and at times, they'll move
17 people around a little bit, too.

18 Q How are the assignment decisions made?
19 Is it random or is there a certain --

20 A No, mostly it is random, because like I
21 said, it goes by the priority sheet or if

1 when one job finishes, they'll just
2 automatically take that individual and
3 put him on the next machine that's open.

4 Q Were the assignments documented?

5 A No.

6 Q Now, if an employee is assigned to a
7 certain job on a machine, does the
8 employee work at that certain job until
9 it's completed?

10 A No, not necessarily. Sometimes that
11 machine could break down, then it will go
12 to get assigned another job and sometimes
13 they're on that job for a couple days or
14 they could be moved around.

15 Q Okay. Now, for the time you work at the
16 shop, were you physically in your
17 department among the people that work
18 there with the machines and everything?

19 A Yes.

20 Q Okay. And did you observe the people as
21 they worked there?

1 A Sure.

2 Q Now, with respect to Mr. Woodard, were
3 you observing his work as well?

4 A Oh, sure.

5 Q Now, when Mr. Woodard first started
6 working at PHB back in 1998, did he work
7 under a certain trial period?

8 A Yes, everybody that starts, they go
9 through the regular union procedures,
10 it's either 60 or 90 days.

11 Q Okay. What's the purpose of the trial
12 period?

13 A Well, to get them broke in, taught, and
14 everything, to make sure everything goes
15 okay as far as making sure they come to
16 work every day and do good work.

17 Q Now, do you observe employees during
18 their trial period?

19 A Sure.

20 Q So do you have any input as to whether an
21 employee stays on as an employee or

1 whether they're hired or fired?

2 A Well, usually when the individual gets
3 hired and that, they go through a break-
4 in period, a training period, that's what
5 that whole 90 days is. Then they get
6 evaluated on an evaluation sheet, the
7 foreman they have at the time, because
8 there's three or four foremen out there,
9 and they get evaluated by them.

10 Q Now, in general, what do you expect of
11 the employees that work in your
12 department?

13 A Just to show up to work on time, to
14 follow the methods and do the proper work
15 that the job needs to be done, staying at
16 the machine and just do a good, fair
17 day's work.

18 Q Did you have the same expectations for
19 Mr. Woodard when he worked there?

20 A Sure.

21 Q Were your expectations for Mr. Woodard

1 different than any of your other
2 employees?

3 A No.

4 Q Now, initially after Mr. Woodard started
5 working at PHB, do you remember whether
6 he was meeting your expectations
7 initially?

8 A Dayved was a fair individual, he did
9
10 pretty -- fair work. There's times where
11
12 we had to talk to him when he wasn't
13
14 staying at his machine or doing a few
15
16 things he wasn't supposed to be doing.

13 Q Did his work performance ever change
14 during the time he worked there or did he
15 continue to meet these expectations?

16 A Yes, he did fair work.

17 Q Now, you said he would leave his machine
18 or were there problems with this work
19 performance at all?

20 A Yes, there's times when he would leave
21 his machine and go talk to other people,

1 leave his machines running or do various
2 other things.

3 Q What's wrong with that?

4 A Well, the machines is not -- the machines
5 they run, they're automatic machines and
6 everything. There may be a machine that's
7 still running, there's something that
8 could go wrong or there's some safety
9 problems to other individuals around the
10 area.

11 Q Do you know how long he would leave his
12 machine?

13 A Not exactly, no.

14 Q Was it for a minute, two minutes, or --

15 A It could be any of that.

16 Q And you don't think that was appropriate?

17 A No, I mean they're allowed to go down get
18 a drink, stuff like that, but basically
19 if you leave for a while, it's going to
20 be a problem.

21 Q What's a while?

1 A Well, I don't have any time limit on it.

2 Q 15 minutes, is that too long?

3 A Oh, 15 minutes, is, without getting
4 relief, because we have relief people
5 that when they do have to go to the
6 bathroom or something like that, then we
7 ask for that and we'll get a relief, set
8 up relief person comes over and runs the
9 machine for them while they go for a
10 bathroom break or whatever they have to
11 do.

12 Q Now, if an employee wants to go on a
13 break, do they go get the relief person?

14 A They tell the foreman or else call
15 myself.

16 Q Okay. And the foreman or yourself would
17 assign the relief person to that machine?

18 A Yes.

19 Q So that would happen when a person would
20 go to lunch as well; right?

21 A At lunchtime, if we didn't keep that

1 machine running, we would tell him to
2 shut it off at a certain period of time,
3 they would shut their machine down, go to
4 lunch, and when they come back, they
5 would start back up.

6 Q Okay. Other than Mr. Woodard leaving his
7 machine for probably longer than you'd
8 like him to, did he have any other
9 problems with his work performance or
10 attitude or anything like that?

11 A No.

12 Q Okay. Now, these issues you had with his
13 leaving the machine, did you tell him
14 about it?

15 A Yes.

16 Q And how did he react?

17 A He seemed fine at the time. There was a
18 couple different times where I just told
19 him, hey, this is the kind of stuff you
20 can't do. It's going to cause you
21 problems. You have to stay at the

1 machine, keep the machine running.

2 Q Would you have to do this many times or
3 how often would you have to remind him?

4 A Just a couple times I talked to him one-
5 on-one about it.

6 Q Two times?

7 A Two times I remember, yes.

8 Q What happened during these one-on-one
9 talks you had with him? You said you had
10 two times where you --

11 A Right, well, one time at the beginning of
12 the shift, periodically during the shift,
13 I'll go around and check the castings,
14 look at them, see if there's anything
15 wrong with them or whatever, and the one
16 time I walked by and there wasn't an
17 operator, so I looked at the casting and
18 there still wasn't an operator there, so
19 I checked my sheet that came with me of
20 the assignments, who's running that
21 machine and Dayved was on this machine

1 and it was a thousand ton one at the time
2 and I started looking around for him, I
3 started walking down to use the one phone
4 and Dayved come around the corner then
5 and I asked him where he was and he said
6 he was over talking to Jamal Shields.

7 Q Okay. And then what did you say to him?

8 A Well, that's one of the occasions that I
9 told him, well, okay, we can't be doing
10 this, we got to stay at the machine
11 because Jamal was over on the side of the
12 department running another machine, which
13 is quite a ways away and you can't leave
14 that machine running, I don't know how
15 long he was gone, but I was there for a
16 couple, three minutes anyhow, and he was
17 gone, you know, quite a while, I don't
18 know how long he was gone, but I said
19 this is the kind of thing that can cause
20 trouble, you know, safety problems or
21 whatever if something goes wrong with

1 that machine.

2 Q Did you have any other people in your
3 department that had these types of
4 problems or issues of leaving their
5 machine longer than you'd like them to?

6 A Yes, I've had problems with other people,
7 too.

8 Q And would you do the same thing to them?

9 A Oh, absolutely.

10 Q You approach and remind them not to or
11 what would you --

12 A Yes, I would approach them, talk to them
13 about staying at the machines and not
14 leaving for a long period of time.

15 Q Now, Mr. Sayers, did you have any
16 personal problems with Mr. Woodard?

17 A No.

18 Q Did you have any problem with him being
19 African-American or black?

20 A Absolutely not.

21 Q In general, do you have any problems with

1 people who are black or members of a
2 minority?

3 A No, ma'am.

4 Q Now, during the time that Mr. Woodard
5 worked at PHB and under your supervision,
6 did you ever deliberately try to give him
7 a hard time or make his employment
8 difficult at PHB?

9 A No.

10 Q Did you ever single him out or target him
11 or harass him, make life difficult for
12 him when he worked there?

13 A No. All I really care about out of any
14 individual there is what kind of work
15 they do at the machine, just to do the
16 eight hours worth of work that they are
17 hired to do.

18 Q So the contacts you've made to Mr.
19 Woodard that you described were because
20 you wanted him to have a better
21 performance?

1 A Correct, you know, staying at the
2 machine, keeping your machine running,
3 because there's different things can
4 happen just not safety problems, but
5 sometimes if you're not watching what you
6 were doing, you're going to have damages
7 to the machine, breakage or whatever and
8 making scrap parts.

9 Q Did you ever make any derogatory or
10 racist comments to or about Mr. Woodard?

11 A No, ma'am.

12 Q Did you ever hear any of Mr. Woodard's
13 other supervisors or coworkers make any
14 racist or derogatory comments to or about
15 him?

16 A No, ma'am.

17 Q Did Mr. Woodard ever complain to you
18 directly about being treated unfairly by
19 his supervisors or coworkers?

20 A Just about me treating him unfairly.

21 Q He told you?

1 A Well, he told the union --

2 Q Telling you directly?

3 A No.

4 Q Did he ever complain to you about any
5 coworkers or supervisors making racist or
6 derogatory comments?

7 A No.

8 Q Now, do you personally think there was a
9 problem in the shop with racism?

10 A No.

11 MR. JOHNSON: Objection,
12 speculation.

13 THE JUDGE: Sustained.

14 MS. PETERSEN: From his own
15 experience.

16 THE JUDGE: Sustained.

17 BY MS. PETERSEN:

18 Q Now, at a prior hearing, Mr. Woodward
19 testified that during his trial period,
20 he was asked by one of his supervisors,
21 Rex Ryan, to work overtime over a

1 weekend, I believe, and then when he
2 showed up, you were the supervisor at the
3 time and you told him to go home. Do you
4 recall something like that?

5 A No, ma'am, I don't. Normal procedure if
6 we do do that, if somebody isn't on the
7 schedule, in case there might be a
8 mistake, we usually just find something
9 for that individual to do.

10 Q Okay. So if he had showed up, you're
11 saying you wouldn't have sent him home?

12 A No.

13 Q Is it possible you could have sent him
14 home?

15 A I don't recall.

16 Q Now, during this trial period, did you
17 have any personal problems with Mr.
18 Woodard?

19 A Personal problems, no.

20 Q If he had been sent home by yourself
21 during his trial period, did you try to

1 make life difficult for him after that
2 time?

3 A No.

4 Q Now, Mr. Woodard also testified that you
5 were constantly putting him on more
6 difficult jobs. Is that true?

7 A No.

8 Q How so?

9 A At that time period, we were moving
10 people around on a regular basis to try
11 to keep -- because we had some jobs that
12 were a little harder, so we were moving
13 people around. Rex Ryan, myself, which
14 Rex is my partner on the other shift that
15 we swing with, we came up with a program
16 where every Wednesday, we would move
17 people around, you know, so that way they
18 would only have to -- they weren't
19 running the same job for more than three
20 days. If we put them on a job on a
21 Wednesday, they would run that job, if it

1 was running, Wednesday, Thursday, Friday,
2 and then they'd have the weekend off
3 unless they worked, of course, then
4 they'd have to run the same job Monday
5 and Tuesday and then that Wednesday,
6 they'd get moved to something else.

7 Q So a person wouldn't be assigned to the
8 same job for three weeks?

9 A No.

10 Q At a time?

11 A Shouldn't be, no.

12 Q Shouldn't. Is it possible?

13 A When we came up with this program, then
14 no, they wouldn't be running the same job
15 for that long.

16 Q Okay. You said there may be harder jobs
17 or jobs that are perceived as more
18 difficult or harder than other jobs?

19 A Some are, yes.

20 Q What types of jobs would they be?

21 A Well, they could be various different

1 kind of jobs, could be a little heavier
2 job or could be a quicker running job.

3 One person might complain about one job
4 that another person likes.

5 Q Well, did you ever set out to
6 specifically assign the heavier or more
7 difficult jobs to Mr. Woodard?

8 A No.

9 Q Now, you indicated there are some jobs
10 that people like and other people
11 wouldn't like?

12 A Yes.

13 Q Now, in Mr. Woodard's case, are you aware
14 of jobs he liked to do, but others didn't
15 like to do?

16 A One job that he did like to run was the
17 -- the customer was called Rex Roth and
18 he seemed to like to run that job, yes.

19 Q Now, conversely, were there jobs that he
20 didn't like to do, but others didn't mind
21 doing?

1 A Not right off the top of my head.

2 Q Okay. Now, did Mr. Woodard ever make
3 complaints to you directly about his job
4 assignments?

5 A Just through the union.

6 Q He didn't approach you directly?

7 A Well, when he went through the union and
8 we had a meeting one time and tried to
9 discuss all this, yes.

10 Q We'll get to that. Well, actually why
11 don't we discuss that now. You said that
12 he had approached -- he went through the
13 union about your job assignments?

14 A Yes.

15 Q Can you tell me what happened there?

16 A Well, he went to -- well, actually he
17 went to my one boss and complained about
18 me, which I was kind of surprised. I
19 heard that he had a problem with a
20 supervisor, but I didn't think it was me.
21 The next day after, my boss at the time,

1 which was Butch Smith, told me that the
2 problem was with me and he wanted to know
3 what was going on. I was kind of
4 surprised because I always thought I
5 treated Dayved okay and everything, but
6 so I went to -- I asked Butch Smith if I
7 could have a meeting with Dayved and
8 everything and I said I'll get the union
9 involved and everything. So at that time,
10 I talked to the union president, which
11 was Greg Biebel (phonetic) and the union
12 steward on that shift, which was Pat
13 Camp, and we had a meeting, had it in my
14 office, the three union individuals and
15 myself and we talked about that.

16 Q How were his complaints addressed? He
17 said he wasn't happy with his job
18 assignment.

19 A His job assignments, he said he didn't
20 have a problem running anything out in
21 the shop, but he felt that I was treating

him unfairly and was assigning harder
jobs just to him.

3 Q Okay, and how was that complaint
4 addressed then?

5 A Well, I didn't think that I did, but I
6 said, well, maybe I'm, you know, let me
7 look it up, so I printed out what he had
8 run for about five or six prior, you
9 know, I could bring that up on the
10 computer and I printed it right out and
11 we looked at that and the union steward
12 and the president and everything, I said
13 it seems to be a pretty good mixture of
14 machines and jobs that he ran and
15 everything.

16 Q Did you ever compare his work with
17 anybody else's?

18 A Yes, that's what he was saying that some
19 other people always got easier jobs all
20 the time, so I had asked him, well, tell
21 me who, I'll print them up and we'll

1 compare them and he said, no, he didn't
2 want to do that, he didn't want to bring
3 anybody else's name into it and stuff and
4 I said, well, that's your only way I can
5 see if I make a mistake or maybe there is
6 something wrong here, we just need to
7 take a look at it and he still declined,
8 he didn't want to bring anybody else in
9 on that, so I looked at the union steward
10 and I said, well, Pat, give me a name,
11 anybody and he gave me a name, I don't
12 remember who it was at the time, so I
13 printed that up, looked that up, printed
14 it out and they were pretty close
15 assortment of jobs that both of them ran.

16 Q Close assortment, you mean hard jobs,
17 easy jobs?

18 A Right, the variety was pretty similar.

19 Q Do you remember if the other person was
20 white?

21 A Yes, probably.

1 Q Now, was there an occasion when you had
2 walked by Mr. Woodward and Jamal Shields
3 at the computer and you said to Mr.
4 Shields, I'll take care of you? What
5 happened?

6 A Yes, I did say that. I don't remember
7 where it was at, if it was at the
8 computer or whatever, but I don't think
9 Dayved was there very long at the time.
10 I was just getting to know him and talk
11 to him a little bit, same thing with
12 Jamal, I talked to him quite a bit. You
13 know, there's lighter times of the day
14 where you like to keep it lighter, get to
15 know your individuals a little bit and
16 have a little bit and have a little fun
17 or kid around a little bit and they were
18 talking about the jobs that they were on
19 and Dayved said he was on a harder job
20 and Jamal said he was on a little lighter
21 job and I just -- that's what I said,

1 yes, I take care of you, Jamal, you know,
2 I was funning around. I didn't know it
3 was a serious matter at the time.

4 Q You didn't mean to be malicious or --

5 A Oh, no, no, and this was before I found
6 out that there was a problem between --
7 that Dayved had a problem or thought I
8 had a problem with him.

9 Q So you said it just the way you said it
10 today, sort of light-hearted?

11 A Yes, that's exactly what it was, you
12 know, you keep things on a lighter side
13 if you can. You want to get to know your
14 individuals and their personalities and
15 everything.

16 Q Did you ever hear Mr. Shields say, wow,
17 Dayved, they're really hitting you hard
18 after this conversation?

19 A I don't recall that, no.

20 Q Now, speaking of Mr. Shields, do you know
21 where in the shop he worked?

1 A Yes, he works, he has the same job Dayved
2 does. He does DCPO, die cast machine
3 operator.

4 Q Was he in the same department as Dayved?

5 A Yes.

6 Q Do you know whether or yourself or any of
7 the supervisors told Mr. Woodard not to
8 talk to Jamal Shields?

9 A Personally, no, just hearsay.

10 Q Okay. Now, going to some specific
11 incidents then Mr. Woodard had testified
12 about, was there an occasion when you saw
13 him standing outside the lunchroom and
14 you told him to warm your lunch or
15 something to that affect?

16 A I did not tell him to warm my lunch, no.

17 Q What happened?

18 A What had happened at that time is there
19 was, I don't know, half a dozen people
20 standing outside the lunchroom, it was
21 fairly early, you know, we don't like

1 people to go to lunch too early because
2 they have to shut the machines down if
3 they're not getting relieved, so we don't
4 want them there before a few minutes
5 before lunchtime and I walked by the
6 lunchroom and it was probably somewhere,
7 five, ten minutes before lunchtime. Like
8 I said, there was a half a dozen people
9 standing there and I noticed there's
10 three or four microwaves already heating
11 up lunches and that and I said, hey,
12 guys, why don't you, you know, sometimes
13 you -- I'm a little sarcastic in trying
14 to get guys to think about what they're
15 doing.

16 Q What do you mean, what were they doing,
17 going to lunch too early?

18 A Oh, yeah, they were way too early. Their
19 lunches were already in the microwaves
20 heating up and I said, hey, why don't you
21 just warm up my lunch, too, you know,

1 being a little sarcastic.

2 Q Again, this is light-hearted or fun, just

3 --

4 A Just to get a point across, yes.

5 Q Did you direct our comment to Mr. Woodard
6 specifically?

7 A Not specifically, no. How could you do
8 that when there's other guys standing in
9 there and there's two or three microwaves
10 going?

11 Q Okay. Now, he also testified that there
12 was an incident where he was on light
13 duty in process control, he was picking
14 up parts, and I guess you had asked where
15 he was and then you subsequently
16 following him around with a stool. Do you
17 remember something like that?

18 A Yes, I remember something like that, but,
19 no, I did not follow him around with a
20 stool.

21 Q What happened?

1 A He was on light duty for either, I can't
2 remember if it was either a knee or ankle
3 injury. He was doing -- helping out
4 process control. Process control takes
5 care of all the procedures on how the
6 parts run and do x-rays and various jobs.
7 So what Dayved was assigned, he would go
8 around twice a day, once at the beginning
9 of the day and once after lunch, with a
10 cart and they have an assigned sheet on
11 certain jobs that are x-ray jobs, that
12 process actually x-rays these jobs to see
13 how solid they are. So he'll go around
14 and pick up these castings and put them
15 on the cart and bring them into process
16 control, probably average right around
17 ten or 12 machines that you have to do
18 that for and he'll put them in the x-ray
19 room, and then they'll do the x-rays on
20 it after that. Then there's the Rex Roth
21 jobs, when they're running, they have to

1 be cut up or sectioned on a jigsaw so
2 they're also -- he would also do that or
3 whoever we have would do that. So that
4 usually took an hour, maybe two hours at
5 most to do that and then after that,
6 Dayved was always disappeared, you know,
7 he wasn't around. So the one day, I paged
8 him a couple times and there wasn't any
9 answer and once he did come around, I
10 asked him where he was. He said he was
11 in the bathroom doing some other stuff.
12 That was after lunch that day. So I
13 said, well, tomorrow, when you come in
14 and do this, when you're done doing the
15 process end of it, I want you to give me
16 a call so we can find you something else
17 to do. Then the next day, I checked with
18 the nurse to see exactly what his
19 restrictions were on what he can do and
20 what he can't do, so I could find
21 something to assign him. At that time,

1 all these restrictions he had, he was
2 supposed to be able to sit down when he
3 needed to take relief off his knee or
4 ankle. So the next day or that same day
5 when he called me, said he was all done,
6 I said, okay, I took him out by six
7 hundred three, which is a machine right
8 next to where he was working the process,
9 took him out in between right there and
10 said, okay, get your broom, we can just
11 sweep this up. He said, well, I can't
12 stand that long, I can't do this because
13 I have to stand, I'm supposed to be able
14 to sit and that and that's when I pointed
15 to a stool because most of the machines
16 have a stool. I said, well, right
17 there's a stool, when you need to sit
18 down, sit down and take a break. When
19 you get this area done, just move on to
20 the next machine.

21 Q You didn't follow him around with the

1 stool?

2 A No, ma'am.

3 Q From place to place?

4 A No.

5 Q Were you with him the whole time as he
6 worked and followed him?

7 A No, I got a very big department to run.
8 Like I said, there's almost 50 people at
9 times and when I make my rounds, I check
10 up on him, see how he's doing.

11 Q When you were checking up on him and were
12 you doing this to harass him or give him
13 a hard time?

14 A No, that's my job. I check on all the
15 guys as I walk around. I always see what
16 they're doing.

17 Q Did you have any type of confrontation
18 with Mr. Woodard as a result of this
19 incident or as a result of the stool and
20 telling him where to work, anything like
21 that, do you recall, a face-to-face

1 confrontation?

2 A Yes, it was probably a couple -- a week
3 or so after that, we had a little
4 confrontation when I took him to an area
5 when he was done doing the process
6 control, I took him down to 1600 ton two,
7 because there's an area down there, that
8 machine was done running and there was a
9 bunch of stuff all over the floor, so I
10 took him down there to clean that area up
11 and we had a little confrontation there
12 where we had to -- well, the union
13 steward was right down from there, but --

14 Q Who's the union steward?

15 A Pat Camp.

16 Q You said a confrontation. Were voices
17 being raised?

18 A Well, yes, they started getting raised,
19 because what I wanted to do, Dayved
20 didn't want to do a few things and the
21 union steward was right there and he had

1 told the union steward that if -- I
2 wasn't to talk to him anymore, that if I
3 had to tell him anything, I had the
4 steward and he'd tell him. That's when I
5 raised my voice a little bit, I said, no,
6 I'm your immediate supervisor. If I need
7 to talk to you, I'm going to talk to you.
8 I don't want to go through -- go find
9 somebody else to go through that --

10 Q Back up. Did the union steward tell him
11 or tell you not to talk to Dayved
12 directly, but to go through him first or
13 was it Dayved telling you?

14 A Dayved was telling -- told me through the
15 steward. He told Pat, he says, I don't
16 want him talking to me anymore. If he
17 has anything to say to me, I want him to
18 tell you and then you can tell me.

19 Q Okay. What was discussed before then
20 that led to this heated argument?

21 A Well, I took Dayved down there and I

1 showed him that I wanted this cleaned up
2 and everything and he said, okay, and I
3 started walking away and all of a sudden,
4 he started leaving the area again and I
5 said where are you going? He said I got
6 to go get my backpack and my Gatorade and
7 all this other stuff, which is way up on
8 the other side of the shop. I said,
9 well, what do you need that for? He
10 said, well, I got to have my Gatorade and
11 everything down there. Well, we have
12 different area through the whole
13 department where we have Gatorade and
14 drinking fountains where you can just mix
15 your own right there, whatever you need.
16 And I told him, I said, well, right
17 there, there's Gatorade right there, I
18 says right there is a bathroom right next
19 to it. Why do you have to go get that
20 other stuff, that's a waste of time.
21 Besides, you're not supposed to be

1 walking around, just stay right down here
2 and, you know, because of his injury and
3 everything, he wasn't supposed to be
4 doing that much walking. So I said right
5 there is everything you need and that's
6 when the union steward walked by and he
7 grabbed the union steward.

8 Q Now, during this time, were you trying to
9 give Dayved a hard time just to be
10 stubborn?

11 A No, not to be stubborn, I didn't mean to
12 give him a hard time at all. What I
13 wanted done was a little bit of work for
14 the time that he's there.

15 Q Okay. Now, he also testified that there
16 was an occasion where he cracked some
17 taps on one of the dies, I think, and he
18 was asked to write a letter to put in his
19 file. Do you know anything about writing
20 a letter for the file?

21 A I wasn't involved in that, no.

1 Q But is this like a procedure of the
2 company's or --

3 A Yes, we do that if there's damage to a
4 trim die or whatever that we feel that
5 there was something that the individual
6 didn't do correctly or should have done
7 correctly, then we do do that.

8 Q Do what, the letter?

9 A Ask them to write a letter.

10 Q What's the purpose of this?

11 A The purpose of doing this, you know,
12 there's times where things do get broke,
13 you know, but it happens a couple times,
14 we'll ask an individual to write down
15 simply just what happened, you know,
16 they're not saying they did something
17 wrong or whatever. We just want them to
18 write down what had happened and
19 everything and then that goes in their
20 files and it makes them think about it a
21 little more, you know, oh, wow, this is

1 going in my file, I got to watch what I'm
2 going a little closer and do a good job,
3 try to make sure this doesn't happen
4 again.

5 Q Does this happen every time when there's
6 damage done or, you know, something
7 breaks down?

8 A No, we don't have them write it all the
9 time. No, there's times that if we feel
10 it's a mechanical breakdown, mechanical
11 problem, then, no, we don't have them
12 write anything.

13 Q Okay. Was Mr. Woodward the only person
14 that was asked to write a letter to put
15 in the file in this case or were other
16 people --

17 A No, many people.

18 Q Are supervisors required to write letters
19 for their file on occasion?

20 A Supervisors themselves?

21 Q Foremen?

1 A No.

2 Q Just the people working on the machines?

3 A Yes.

4 Q Now, I think he had also testified that
5 he wanted to be on the Rex Roth team and
6 there was a meeting about that. Do you
7 recall anything about that?

8 A Yes, Dayved was upset because he wasn't
9 on that Rex Roth team.

10 Q Can you describe what the Rex Roth team
11 is?

12 A Sure. Different companies that we make
13 things for that were one of our bigger
14 customers, if we have problems with their
15 jobs, there was teams that were organized
16 to do some problem-solving on these jobs
17 and they would, wherever these jobs,
18 these castings went through different
19 departments and that, we would select
20 people that worked on them in different
21 areas so he could do the problem-solving

1 on them, anything that was done with that
2 job. And those people, this particular
3 job at the time, we were having a lot of
4 problems with a lot of rejects, a lot of
5 things being sent back from the
6 customers. So they had this team and then
7 we decided to keep the team members that
8 were running these jobs on those jobs to
9 run all the time.

10 Q These members had been picked before Mr.
11 Woodard had demonstrated an interest in
12 this?

13 A Yes.

14 Q And were you responsible for assigning
15 people to this team or how were people
16 put on this team?

17 A No, the people that were put on that
18 team, there were suggestions from -- all
19 the supervisors were asked their
20 suggestion on each shift who they would
21 like to see run that and we were putting

1 people on there that were taking the
2 extra step to make sure they did high
3 quality work and weren't missing
4 anything, didn't have any other work that
5 had to be reworked a lot. Those were the
6 individuals we were trying to put on
7 there because we were in trouble with
8 this customer at that time.

9 Q Do you know why Mr. Woodard wasn't picked
10 for the team?

11 A Dayved's work at the time wasn't at the
12 standards that we wanted to be put on
13 there. I think we picked three people
14 per shift, if I recall, and Dayved was
15 not one of those three.

16 Q Okay. Did it have anything to do with
17 his race?

18 A Oh, absolutely not. As a matter of fact,
19 Jamal Shields was on that team and Jamal
20 is an African-American.

21 Q Now, you had mentioned a couple times

1 during your testimony that there were
2 some meetings held with Mr. Woodard and a
3 union representative and maybe members of
4 management or yourself. Do you recall
5 attending these types of meetings?

6 A Yes, a couple.

7 Q They're probably in response to
8 complaints that he had?

9 A Yes.

10 Q Okay. Do you recall any specific
11 meetings?

12 A Yes, I already talked about the one and I
13 thought that I satisfied -- as a matter
14 of fact --

15 Q The one with the job assignments?

16 A The job assignments and felt that I had a
17 problem with him.

18 Q Okay. And any other meetings do you
19 recall?

20 A There was one other short meeting with my
21 boss, Butch Smith, the same thing, he was

complaining that I was out to get him or
treating him unfairly.

3 Q Were you out to get him?

4 A No.

5 Q Did you treat him differently than other
6 people?

7 A No, I didn't treat him differently than
anybody else. All I want people to do is
9 pretty much stay at their machines and do
10 a good day's work.

11 Q Now, with respect to Mr. Woodard's
12 complaints, were his complaints addressed
13 during these meetings, like did an
14 investigation follow or, you know, what
15 happened during these meetings?

16 A Well, there wasn't any investigation that
17 followed.

18 Q Did they talk to the people involved?

19 A Oh, sure.

20 Q Okay. And you said a union representative
21 was there. Do you know if any union

1 action had been taken by the union on
2 behalf of Mr. Woodard?

3 A No, I don't believe so.

4 Q During these meetings that you attended,
5 do you recall whether Mr. Woodard was
6 told by yourself or anybody else that
7 nothing would be done about his
8 complaints?

9 A Not by myself, no.

10 Q Did you hear anybody say something like
11 that, that nothing is going to be done or
12 something to that affect?

13 A Not on the company's end of things, no.

14 Q Now, when Mr. Woodard worked at PHB, did
15 any of his coworkers complain to you
16 about him?

17 A About Dayved?

18 Q Yes, about his work performance or
19 anything to that affect?

20 A People that relieved his machines and
21 stuff like that were, during lunches,

1 take too long of lunches and Dayved
2 wouldn't be the only one. There's other
3 ones that do that, also, but if we didn't
4 talk one-on-one with the individual, most
5 of the times what I did when people
6 started complaining about people taking
7 too long of breaks, I would have the
8 union steward go and talk to everybody
9 and that way, it covers the whole group
10 and that and if we had any problems after
11 that, it prolonged, then I would go and
12 talk to the individual.

13 Q Now, you said you'd have the union
14 steward talk to everybody. Did that
15 include Mr. Woodard?

16 A Yes.

17 Q Did Kerry Goodwine -- or actually was
18 Kerry Goodwine an employee at PHB during
19 the time Mr. Woodard worked there?

20 A Yes.

21 Q Did he work in the same department as you

1 did?

2 A Yes.

3 Q Did he ever mention anything to you about
4 Mr. Woodard?

5 A Yes, he did.

6 Q What did he say?

7 A That one time -

8 MR. JOHNSON: Objection, this
9 is hearsay.

10 MS. PETERSEN: This is going to
11 be, I expect this person to testify
12 to day.

13 THE JUDGE: You're going to call
14 this witness, so I'm going to allow
15 the testimony. You may answer the
16 question.

17 THE WITNESS: That meeting that
18 I discussed about where I had the
19 union president there, the union
20 steward, and everything when we
21 talked and I compared people on job

1 assignments and everything, they
2 looked okay and that, Dayved had
3 said that in that meeting, he
4 brought up Kerry Goodwine's name
5 and Jamal's name, saying they also
6 had a problem and how I did things
7 as a supervisor assigning jobs and
8 everything and after that meeting
9 was over, the very next day, Kerry
10 had approached me and asked if he
11 could talk to me and I said sure,
12 so we went in my office. And he
13 told me that he understood that
14 Dayved brought his name into the
15 meeting yesterday and stuff and I
16 said, yeah, he did. He said, well,
17 I want you to know right from him
18 that he had already talked to
19 Dayved and told Dayved to never
20 bring his name up in a conversation
21 again with problems. He says if I

1 have a problem with you, I'll come
2 to you myself and talk to you. He
3 said I want you to know, I don't
4 have a problem with you, I don't
5 have a problem with how -- you
6 treat me real good and everything.

7 He says I don't have a problem with
8 you. Then he also told me at that
9 time that I should watch things,
10 how they're done and everything,
11 because Dayved has a problem with
12 me and he likes to -- he's known
13 Dayved for a long time and he likes
14 to try to find ways to get things a
15 little easier.

16 BY MS. PETERSEN:

17 Q Did you understand what he meant by that?

18 A I guess what he was trying to tell me was

19 --

20 MS. PETERSEN: We'll address
21 this with Kerry at his deposition.

1 MR. JOHNSON: Well, if he's
2 guessing, it's speculation.

3 THE JUDGE: Sustained.

4 BY MS. PETERSEN:

5 Q Let's move on. Now, do you recall Mr.
6 Woodard being off work for approximately
7 a year due to a non-work related shoulder
8 injury?

9 A Yes, he was probably off about a year.

10 Q Did you ever see him come into the shop
11 during the period that he was not
12 working?

13 A Yes.

14 Q What occasions were these?

15 A He came in every Wednesday for his -- I
16 mean I only seen him every other week
17 because I was only on second shift every
18 other week, but during that period of
19 time, he come in every week for his
20 paycheck.

21 Q Every week that he was off work?

1 A Yes.

2 Q Now, was he required to come in to get
3 his check, do you know?

4 A No, that could have been mailed to him.

5 Q Did you ever talk to him during these
6 visits that he made to the shop?

7 A Yes, one time I happened to go into
8 process control after lunch to get some
9 stuff and he was about to come in to get
10 his paycheck and he was in there talking
11 to individuals and I said hi to him and I
12 asked him, I said, hey, how you doing,
13 when are you going to be coming back to
14 work? He says, yeah, right, like you
15 won't be back. I said sure. He acted
16 like why do you care, you know, I don't
17 like to see anybody off work. I want to
18 see them come back to work.

19 Q Did you ever notice him feeling
20 uncomfortable or unhappy about being
21 there and talking to you or being at the

1 shop, your impressions?

2 A No, there's times where he didn't seem to
3 -- at that time, he seemed kind of
4 awkward, you know, like he didn't believe
5 I cared about it or anything.

6 Q Now, during the time Mr. Woodard worked
7 there, did you try to single him out,
8 make him a target or harassment by
9 yourself or make life difficult for him
10 as his supervisor?

11 A No.

12 MS. PETERSEN: That's all I
13 have. Thank you, Mr. Sayers.

14 THE JUDGE: You may cross-
15 examine.

16 * * *

17 **CROSS-EXAMINATION**

18 BY MR. JOHNSON:

19 Q Let me just start with something you
20 testified to to begin with in regards to
21 Kerry Goodwine, your testimony is that

1 Mr. Goodwine came and saw you and said he
2 had no problems with you?

3 A Um-hmm.

4 Q And he had no problems with the company?

5 A Right, he didn't have any problem.

6 Q Are you aware that he filed a claim of
7 discrimination?

8 A With the company?

9 Q Yes.

10 A Well, he filed discrimination at one time
11 with one of my foremen, which we had
12 taken care of that.

13 Q You're not aware that he filed a
14 complaint with the EEOC?

15 A His name was on the thing when we went
16 through the EEOC, yes.

17 Q Are you aware that the EEOC did an
18 investigation based on his complaints?

19 A Again, his name was with Dayved's, but
20 that was, I believed to be Dayved's
21 report.

1 Q So you have no independent knowledge that
2 Mr. Goodwine is currently litigating a
3 Federal lawsuit against PHB for
4 discrimination?

5 A I don't know this. I know Dayved is.

6 Q Are you aware of any other lawsuits
7 against PHB based on discrimination
8 except Mr. Woodard's?

9 A Right now, just Mr. Woodard's, yes.

10 Q In the past, were there other lawsuits
11 based on discrimination against PHB?

12 A Mr. Jackson had one, Freddy Jackson.

13 Q Do you know roughly around what time
14 period that was?

15 A No, I don't.

16 Q Is that the only other lawsuit that
17 you're aware of?

18 A Yes.

19 Q Do you know what the result of that
20 lawsuit was?

21 A Not completely, no. It didn't involve

1 me.

2 Q But, if you know, was it based on racial
3 discrimination?

4 A I really don't know.

5 Q Was Mr. Jackson black?

6 A Yes.

7 Q Did you ever receive any orders from --
8 well, let me ask you this, who is your
9 supervisor or boss? Who do you report
10 to?

11 A At that time, it was Butch Smith.

12 Q And what is his position?

13 A He was manager of aluminum die cast.

14 Q Did you ever receive any instructions
15 from Mr. Smith or anyone else as to how
16 you were going to treat or have any
17 policies in regards to discrimination?

18 A We don't put up a discrimination right
19 from the get-go. I don't exactly know
20 what you mean.

21 Q Well, do you agree with me that Mr.

1 Woodard at some point made some
2 allegations that he was being treated
3 unfairly based on his race?

4 A Yes.

5 Q What was done when those complaints were
6 made, if anything?

7 A Well, with Dayved, we had a meeting, we
8 talked about the discrimination and
9 everything else and there wasn't any --
10 didn't see where anything was coming from
11 it.

12 Q When you say we didn't see anything there
13 was anything coming from it, are you
14 talking about yourself?

15 A Yes.

16 Q Did Mr. Woodard agree with you?

17 A Not entirely, no.

18 Q What about these derogatory comments, do
19 you know anything about, any complaints
20 about derogatory comments?

21 A No. What do you mean derogatory?

1 Q Well, let me ask you this, did Mr.

2 Woodard ever complain that racial slurs
3 were being said in the workplace?

4 A To me, no.

5 Q Did Butch Smith or any of the higher-ups
6 in the company talk to you about the fact
7 that someone had made complaints about
8 racial slurs being made?

9 A There was one instance that I was not
10 involved with. I believe it was Tommy
11 Thompson (phonetic) was talking to
12 another individual, but --

13 Q Who's Tommy Thompson?

14 A He was a foreman at the time in aluminum
15 die cast.

16 Q What do you know about that incident?

17 A I don't know a whole lot. All I know is
18 hearsay.

19 Q So your understanding is that Mr.
20 Thompson used a racial slur?

21 A Just talking to another individual,

1 nothing too --

2 Q It wasn't directed to Mr. Woodard?

3 A No.

4 Q But it was said as far as you know?

5 A As far as I know, yes.

6 Q Was anything done in regards to a racial
7 slur made by Mr. Thompson, whether it was
8 to Mr. Woodard or a coworker?

9 A I know he was called up front and talked
10 to. I don't know what kind of
11 disciplinary actions or anything.

12 Q Is there a written policy on racial slurs
13 being made by either employees and/or
14 foremen?

15 A Written policy, I don't believe so. It's
16 not tolerated, but I don't think there's
17 anything written.

18 Q Do you know if any disciplinary action
19 was taken against Mr. Thompson?

20 A I do not know that, no.

21 Q Now, I'd like to talk about assignments

1 on jobs.

2 A Okay.

3 Q I think originally your testimony that
4 assignments are random?

5 A For the most part, yes.

6 Q Okay. And could you again explain how
7 you decide what person is going to be on
8 what machine?

9 A They're just placed basically, we have a
10 board up there at each machine has a list
11 and then every individual has a nametag
12 and those nametags are just put at
13 machines and as their machine finishes or
14 breaks down or whatever, then their name
15 is taken off and put to an open machine
16 and then they have a separate sheet where
17 the jobs are assigned priorities on how
18 important they are, how quick they have
19 to get them delivered. So then, of
20 course, you go by priorities.

21 Q Now, at some point, did that policy of

1 how you made assignments change?

2 A I don't know exactly what the timeframe
3 was, but we went to changing people
4 around every Wednesday.

5 Q And I think your testimony was the policy
6 changed where you would move around every
7 Wednesday to rotate people off of harder
8 jobs?

9 A We were attempting to get rotation, yes,
10 get frequent -- different frequency on
11 try to change them from a bigger machine
12 to a smaller machine.

13 Q Were you still going down the list at
14 that point or not?

15 A What do you mean going down the list?

16 Q Well, originally you said you would go
17 down a list to assign people to these
18 jobs?

19 A The board, yes -- oh, the list is a
20 priority list, that's what you're talking
21 about.

1 Q Were you still going down the board after
2 you instituted this policy where you
3 would switch every Wednesday?

4 A Well, that's where you get some of the
5 natural changes. We were changing people
6 around every Wednesday, but if people
7 called off, then you would have to go by
8 the priority list. So that person may go
9 back to a bigger machine. That part of
10 it, you know, that's just natural flow.
11 If somebody called off, all of a sudden,
12 okay, now you got to go to the lowest
13 priority machine, shut that one down, and
14 put that guy over to that machine to fill
15 the shot.

16 Q Do you know when PHB instituted this
17 policy?

18 A I don't know the date or anything, but we
19 had some complaints on some people that
20 were saying they were getting some bigger
21 jobs and that, so that's why we came up

1 with that to try to eliminate that, to
2 try a little more flow on it.

3 Q I know you don't know an exact date, but
4 could you tell me a year?

5 A No, I don't know what year it was. It
6 was shortly after we had that meeting
7 with Dayved and there was some other
8 people in the department, also, that were
9 complaining about the same thing, so
10 that's when Rex and myself sat down and
11 we came up with this moving them around
12 on Wednesdays to try to get a little more
13 flow, to try to help the problem, if
14 there was a problem with people being on
15 the same machine too long.

16 Q Do you know if there were any union
17 grievances filed by Mr. Woodard?

18 A No, I do not.

19 Q If there were, would you be a part of the
20 grievance procedure?

21 A Only if they were to come and get

1 information from me, yes.

2 Q So you're not aware of any grievances
3 filed by Mr. Woodard in any respect?

4 A No. The only time we were to get
5 involved in that is if the grievance was
6 filed, then they would go through the
7 grievance thing through personnel and
8 everything and then get us involved if it
9 ever got that far, but I was never
10 brought in on anything like that.

11 Q It never got that far with Mr. Woodard?

12 A No, not to my knowledge.

13 Q Mr. Sayers, you testified as to Mr.
14 Woodard not being at his machine?

15 A Correct, at times.

16 Q And I think you testified that only
17 happened twice; is that correct?

18 A No, that didn't only happen twice. I
19 said there was two instances that I
20 stopped Dayved and talked to him and
21 explained to him that this creates some

1 problems. You know, the other time that
2 I didn't talk about, I walked by his
3 machine to look at castings again and he
4 wasn't there, so I walked by -- this was
5 603, so I walked over to use the phone in
6 the process to page him and when I picked
7 up the phone, he's talking on the phone
8 and here, there's another phone in the x-
9 ray room and Dayved was talking on it.
10 So I hung it up and I waited for him to
11 come out and when he was done talking on
12 the phone, he's in this room where you
13 can't see him talking on the phone and
14 his machine is out there running all by
15 itself. So when he came out, I just
16 simply talked to him, Dayved, this is the
17 kind of stuff that creates problems. You
18 can't do this, please, you know, please
19 don't do this stuff.

20 Q Did anything that day? I mean you said
21 not being at the machine could create

1 problems. Was there a malfunction or a
2 problem with the machine on that date?

3 A Nothing happened at that time, no, but
4 that doesn't mean that it couldn't.

5 Q And I believe you have no knowledge as to
6 how long he was away from the machine?

7 A No.

8 Q So it could have been just a few seconds?

9 A It was more than a few seconds because
10 when I walked by the machine, I looked at
11 the part, he was no longer there. I
12 walked up and down the aisle and then I
13 walked up to use the phone in process and
14 then I waited for him to stop when he was
15 done with his conversation, so it was
16 more than just a few seconds. You're
17 talking at least minutes.

18 Q I'd like to talk about the period of time
19 that Mr. Woodard was on light duty and
20 the incident you had testified to in
21 regards to a stool.

1 A Okay.

2 Q What were Mr. Woodard's restrictions at
3 the time, if you know?

4 A His restrictions at the time that he
5 could only do so much walking, you know,
6 according to when he felt uncomfortable
7 with how much standing or walking, he was
8 to sit down.

9 Q Okay. Now, you think you testified to,
10 he had a job that would only take a
11 couple hours of his shift?

12 A Um-hmm.

13 Q Then you were trying to find work for him
14 to do?

15 A To fill the rest of the time, correct.

16 Q And you testified as to taking him down
17 to different areas of the plant?

18 A Um-hmm.

19 Q And that was to clean up?

20 A Yes, simple sweeping.

21 Q All right. Did you ever just tell Mr.

1 Woodard to report to or to go an area of
2 the shop and clean up?

3 A Sure, different machines.

4 Q But you testified that you would take him
5 from place to place?

6 A I took him to 603 the very first time to
7 tell him what to do and everything and
8 then after that, I took him down, yes, I
9 took him down to 1600 ton two to show him
10 exactly what area we needed cleaned up.

11 Q And what does the clean-up entail? Is
12 that just --

13 A Simple sweeping.

14 Q And you had to physically show him?

15 A Sure.

16 Q And each time you took him to a different
17 area, you would actually go with him and
18 show him what to sweep?

19 A No, just those two times, the very first
20 time, then after that, I told him just to
21 go right down the line from machine to

1 machine, and then the second time.

2 Q I've never been in your plant, sir, but
3 there's been some references to Gatorade.

4 Mr. Woodard would have Gatorade or there
5 would be Gatorade available for the
6 employees. I assume it's a relatively
7 hot place in there?

8 A It can be during the summertime, yes.

9 Q So would it be unusual for Mr. Woodard to
10 have his own Gatorade that he would have
11 during his shift?

12 A Yes, Dayved had a backpack he usually
13 carried with him from whenever he went on
14 a machine, yes.

15 Q That was not just when he was on light
16 duty, but for the whole time he was
17 employed at PHB?

18 A Um-hmm.

19 THE JUDGE: You need to say yes
20 or no to the question.

21 THE WITNESS: Yes. Sorry.

THE JUDGE: That's all right.

2 BY MR. JOHNSON:

3 Q So it wasn't unusual for Mr. Woodard to
4 say I need to get my backpack and
5 Gatorade?

6 A He usually had that at his machine, yes.

7 Q Do you know of any other complaints Mr.
8 Woodard made in regards to discrimination
9 other than what we talked about already?

10 A Not personally, no.

11 Q Are you aware of an incident where it was
12 alleged that there was some graffiti in
13 the bathroom?

14 A I seen and heard of it, no, just through
15 these proceedings is all I heard of it.

16 Q So you knew nothing about it?

17 A No.

18 Q Until this workers' compensation matter
19 started?

20 A Right, that and the thing that I went
21 through with the EEOC.

1 Q So you became aware of the graffiti when
2 the EEOC did their investigation?

3 A Yes, they asked me questions, correct.

4 Q And your testimony would have been that
5 you didn't know anything about it?

6 A Correct.

7 Q Was there ever a memo circulated among
8 the foremen or a meeting held to discuss
9 allegations of discrimination occurring
10 at PHB at any time?

11 A No, I don't believe so.

12 MR. JOHNSON: That's all the
13 questions I have.

14 THE JUDGE: Any redirect?

15 * * *

16 **REDIRECT EXAMINATION**

17 BY MS. PETERSEN:

18 Q Mr. Sayers, did you ever see graffiti or
19 writings in any of the bathrooms at PHB
20 that you entered that were racist in
21 nature?

1 A Racist, no. There is stuff on the walls
2 all the time, but our janitor gets it
3 painted over usually as quick as he sees
4 stuff, he usually paints over.

5 Q What kind of stuff is on the walls over
6 there?

7 A It's just, I get things written about me,
8 people, you know, somebody don't like
9 somebody else, they write something on
10 there, it's like a bunch of little kids.

11 Q Was there anything written about Mr.
12 Woodard in particular?

13 A No, I don't really pay any attention to
14 what's written on there. You see what's
15 there, but you get it painted over.

16 Q Oh, just for the court reporter, how do
17 you spell your last name?

18 A S-a-y-e-r-s.

19 MS. PETERSEN: That's all I
20 have. Thank you.

21 THE JUDGE: Anything else,

1 Attorney Johnson?

2 MR. JOHNSON: Just a few

3 questions, your Honor.

4 * * *

5 **RECROSS-EXAMINATION**

6 BY MR. JOHNSON:

7 Q Are you aware that the EEOC made a
8 determination that there was, in fact --

9 MS. PETERSEN: I'm going to
10 object. I don't see the relevancy
11 to the instant proceedings.

12 THE JUDGE: That there was a
13 finding by the EEOC that there was
14 discrimination at PHB?

15 MS. PETERSEN: I don't think
16 it's relevant to whether there is
17 abnormal working conditions for Mr.
18 Woodard, in particular.

19 THE JUDGE: The basis of the
20 abnormal working conditions in the
21 case is the allegation of racial

1 discrimination. Objection
2 overruled.

3 MR. JOHNSON: Thank you, your
4 Honor.

5 BY MR. JOHNSON:

6 Q Are you aware of the determination made
7 by the EEOC?

8 A No, I don't know what the final outcome
9 was, no.

10 Q You're not aware that they found that
11 there was graffiti in the bathroom of a
12 burning cross?

13 A No. I've heard and read that, but I, you
14 know, know nothing else about it.

15 MR. JOHNSON: That's all the
16 questions I have.

17 MS. PETERSEN: Nothing further.

18 THE JUDGE: I have a couple
19 questions for you. You indicated
20 that part of your job in managing
21 the whole department or supervising

1 the whole department is assigning
2 operators to machines; is that
3 correct?

4 THE WITNESS: Yes, ma'am.

5 THE JUDGE: So you would be the
6 person ultimately responsible for
7 assigning Mr. Woodard to whatever
8 machine he was assigned to; is that
9 correct?

10 THE CLAIMANT: I'm one of three
11 or four people, yes, but on that
12 shift, my dispatcher will put
13 people on there and then if -- I'll
14 move them around after that if they
15 need to be moved around as far as
16 priorities.

17 THE JUDGE: The assignment of
18 jobs, is that done on a weekly --
19 the assignment to machines, is that
20 done on a daily basis or is that
21 done on a weekly basis?

1 THE WITNESS: It could be daily,
2 all depending on what jobs finish,
3 what people call off, you have to
4 fill the gaps and everything.

5 THE JUDGE: You also testified
6 in describing some of the work
7 there, that an individual could be
8 assigned to one particular job for
9 three or four days in a row; is
10 that correct?

11 THE WITNESS: Yes, ma'am.

12 THE JUDGE: That would be the
13 same machine producing the same
14 part; is that correct?

15 THE WITNESS: Yes.

16 THE JUDGE: If it is a Wednesday
17 and that person is not done with a
18 particular job that they have been
19 working, would they still be pulled
20 and reassigned or do they have to
21 finish the job that they started?

1 THE WITNESS: What we were doing
2 at that time on Wednesday, they
3 would run it Wednesday, Thursday,
4 and Friday, and then it didn't
5 matter what they did on the
6 weekend, if that job was still
7 running or that machine, it didn't
8 even require the same job, they
9 would be on that machine, sometimes
10 that job might finish, the next day
11 it would be a different job that's
12 in there, but they're on that same
13 machine for three days at the end
14 of the week and then the two days
15 at the beginning of the next week
16 until they got moved on Wednesday
17 again.

18 THE JUDGE: Are there particular
19 operators that are assigned to, I'm
20 just going to use as an example,
21 let's say you have five presses or

1 five die cast machines. Would I
2 always get assigned, if I was a die
3 cast operator, to machine one?

4 THE WITNESS: No.

5 THE JUDGE: Is that where the
6 rotation comes in?

7 THE WITNESS: Right.

8 THE JUDGE: Does rotation have
9 to do with the machine or does it
10 have to do with the difficulty of
11 the particular job being done?

12 THE WITNESS: Usually the
13 machine. We have machines, as far
14 as just giving an example, we did
15 have machines as small as a 250-ton
16 machine and then they go all the
17 way as big as a 2,000-ton machine
18 and, of course, you're bigger
19 machine is going to produce a
20 little bigger part.

21 THE JUDGE: Does that make that

1 particular machine more difficult
2 to operate?

3 THE WITNESS: Not necessarily.

4 THE JUDGE: You also described
5 the speed or the cycle of the
6 product being produced could also
7 be a factor whether or not it's a
8 difficult job?

9 THE WITNESS: Right. Your
10 smaller machines will go at a more
11 frequent pace.

12 THE JUDGE: Is it your testimony
13 that in all the years that you've
14 been employed at PHB Die Casting,
15 you have never heard racial slurs
16 on the job site?

17 THE WITNESS: I've heard them,
18 of course, and like I said, they're
19 not tolerated. If I hear somebody
20 say something, I tell them, hey,
21 guys, watch what you're saying,

1 watch what you're doing.

2 THE JUDGE: Have you ever had to
3 take any disciplinary action
4 against co-employees or foremen for
5 this type of behavior?

6 THE WITNESS: Well, just
7 recently, just recently we have
8 just done that last week and in the
9 past, we have talked to other
10 people, too, yes.

11 THE JUDGE: Have you taken any
12 formal disciplinary action where
13 someone is written up or suspended
14 for three days or anything for that
15 type of behavior?

16 THE WITNESS: Yes.

17 THE JUDGE: During the time that
18 Mr. Woodard was employed there, did
19 you ever have to take action
20 against a co-employee or a
21 supervisor for that type of

1 behavior?

2 THE WITNESS: I don't believe

3 so.

4 THE JUDGE: You yourself did not
5 see the graffiti that was alleged
6 to be in the bathroom that
7 consisted of a burning cross?

8 THE WITNESS: No, ma'am.

9 THE JUDGE: How long was Mr.
10 Woodard on light duty for the
11 restrictions on his leg or ankle?

12 THE WITNESS: I'm not really
13 sure.

14 THE JUDGE: Was it more than a
15 couple days?

16 THE WITNESS: Yes.

17 THE JUDGE: Was it several
18 weeks?

19 THE WITNESS: Yes.

20 THE JUDGE: And during that
21 time, did you, on a daily basis,

1 take him to his job assignments?

2 THE WITNESS: No.

3 THE JUDGE: The description that
4 you took him to one machine area
5 and you took him to another machine
6 area, did that all happen on one
7 day?

8 THE WITNESS: No. I'm not even
9 sure if it was the same week.

10 THE JUDGE: Generally speaking,
11 when he was on light duty, he was
12 assigned to the quality inspection
13 job?

14 THE WITNESS: Process control,
15 yes.

16 THE JUDGE: And the process
17 control job, you understood only
18 took several hours to perform; is
19 that correct?

20 THE WITNESS: Yes.

21 THE JUDGE: Thereafter you

1 assigned Mr. Woodard to do some
2 janitorial clean-up; is that
3 correct?

4 THE WITNESS: Basically, yes.

5 THE JUDGE: And did he know
6 where he was supposed to go every
7 day to do the janitorial clean-up?

8 THE WITNESS: No, I showed him
9 that first time, the first machine
10 to go to, and then after that, I
11 said just work down the row, you
12 know, go from machine to machine
13 where it needs to be swept up.

14 THE JUDGE: Did you have the
15 occasion to walk with him from
16 machine station to machine station
17 or cell with the stool and carry
18 the stool for him?

19 THE WITNESS: No, ma'am, no.

20 There's usually a stool at every
21 machine.

1 THE JUDGE: So there wasn't a
2 stool that was to be taken from job
3 area to job area?

4 THE WITNESS: No.

5 THE JUDGE: Do you remember how
6 many meetings you may have attended
7 with the claimant, Mr. Woodard, and
8 union personnel regarding his
9 complaints of discrimination?

10 THE WITNESS: I remember two.

11 THE JUDGE: Did one involve the
12 assignment of jobs and he felt he
13 was being treated differently in
14 being given hard jobs because of
15 his race?

16 THE WITNESS: That was in both
17 meetings, yes.

18 THE JUDGE: What was the second
19 meeting that you recall? What
20 actual discrimination was involved?

21 THE WITNESS: It was just going

1 on the same thing with that he felt
2 that I was treating him unfairly
3 and the job assignment wasn't
4 getting any better. It also had to
5 do with the Rex Roth, him wanting
6 to be on the Rex Roth team and
7 running the Rex Roth job more.

8 THE JUDGE: And during that
9 meeting, did he indicate that he
10 felt he wasn't selected for this
11 team for racial reasons?

12 THE WITNESS: I don't think so.

13 THE JUDGE: How many shifts does
14 the aluminum die cast department
15 have?

16 THE WITNESS: Three.

17 THE JUDGE: On the three shifts
18 during the time that Mr. Woodard
19 was employed, how many of the
20 employees were black?

21 THE WITNESS: The time that he

1 was employed all three shifts --

2 THE JUDGE: You can give me a

3 fluctuation or fluctuating between.

4 THE WITNESS: -- probably half a

5 dozen.

6 THE JUDGE: By half a dozen, you

7 mean about six?

8 THE WITNESS: About six, yes,

9 right around there, I think.

10 THE JUDGE: On every shift, are

11 there 50 employees approximately?

12 THE WITNESS: It varies. When

13 we're slow, sometimes we slow down

14 to about 30 or so, and then when we

15 were real busy, it could be up to

16 50. It really fluctuates on what

17 kind of work we have and stuff.

18 THE JUDGE: If you had a

19 complement of 30 to 50 employees on

20 a shift, how many of those

21 employees would be black?

1 THE WITNESS: Right now probably
2 just two, two per shift.

3 THE JUDGE: Presently are there
4 blacks employed at PHB?

5 THE WITNESS: Yes.

6 THE JUDGE: Could you tell me
7 what's the longest period of
8 employment a black employee has
9 held at PHB?

10 THE WITNESS: Oh, boy, I don't
11 -- there's several right now that
12 are in the teens, I would believe.

13 THE JUDGE: After the meeting
14 that you had with the union
15 individuals that were present
16 regarding the assignment of jobs
17 and the issues as to whether or not
18 Mr. Woodard was assigned more
19 difficult jobs on a more regular
20 basis than other employees, was
21 there a finding made that his

1 accusations were valid?

2 THE WITNESS: Well, the union
3 steward or the -- as a matter of
4 fact, the union president told me,
5 he thought we were doing everything
6 we could. He felt that he didn't
7 find that I was doing anything
8 wrong. He told me at the time that
9 I handled that meeting real well
10 and presented everything, seemed to
11 be fair.

12 THE JUDGE: And the union did
13 not file any other grievance
14 following that meeting?

15 THE WITNESS: No, it was dropped
16 right there.

17 THE JUDGE: Was there a report
18 generated as a result of that
19 meeting?

20 THE WITNESS: No.

21 THE JUDGE: Was there any

1 disciplinary action taken against
2 anyone because of that meeting?

3 THE WITNESS: No.

4 THE JUDGE: As a supervisor,
5 were you involved in the
6 evaluations that were performed for
7 Mr. Woodard?

8 THE WITNESS: I would look them
9 over after they were done and read
10 over. I don't remember Dayved's
11 primarily, but that's usually what
12 happens. If I might do them
13 myself, all depending on what the
14 classification is, but if it's
15 Dayved's work classification, I
16 like the foreman that is looking
17 over the individual or the machine
18 that individual runs, whoever is
19 performing and is over that, that's
20 who I want doing the evaluation
21 because they have more hands-on

experience with what the person did.

THE JUDGE: Do you have any recollection at this time as to the type of evaluations Mr. Woodard had, whether they were excellent, satisfactory, below average-type of evaluations?

THE WITNESS: No, I don't.

THE JUDGE: To your knowledge, was Mr. Woodard ever disciplined because of a poor evaluation?

THE WITNESS: No.

THE JUDGE: You described Mr. Woodard as performing fair work; is that correct?

THE WITNESS: Yes

THE JUDGE: But the work was sufficient to keep him as an employee: is that correct?

THE WITNESS: Yes

1 THE JUDGE: Did you ever write
2 the claimant up or take any
3 disciplinary actions against Mr.
4 Woodard for him leaving his
5 machine?

6 THE WITNESS: No. I was trying
7 to just get to him so he would know
8 that that's going to create
9 problems, it's a safety problem
10 most of all that he needs to stay
11 at his machine.

12 THE JUDGE: Were any of the
13 meetings that you had with Mr.
14 Woodard and the union and other
15 management people, did they
16 specifically involve allegations of
17 racial discrimination?

18 THE WITNESS: Could you say that
19 again?

20 THE JUDGE: Any of the meetings
21 that you had with Mr. Woodard and

1 the union, did they involve
2 specific allegations or racial
3 discrimination?

4 THE WITNESS: It would be
5 brought up, you know, that I had a
6 problem, like, at the meetings and
7 that, he thought I was racial and
8 that, which I told him, no, I'm
9 not, you know, I don't have a
10 problem with African-Americans. I
11 even told him in that one meeting,
12 I said, as a matter of fact, my
13 best friend in school was an
14 African-American and he told me
15 that didn't make any difference.

16 THE JUDGE: Have any other
17 employees during the time that you
18 have been employed at PHB brought
19 discrimination charges against you?

20 THE WITNESS: Against me, no.

21 THE JUDGE: And you, yourself,

1 have never been disciplined by your
2 manager or the owner for alleged
3 racial discrimination against
4 employees?

5 THE WITNESS: No way.

6 THE JUDGE: Have you been
7 involved in the EEOC findings of
8 fact or hearings in Mr. Woodard's
9 case?

10 THE WITNESS: Had I been
11 involved in that hearing, yes.

12 THE JUDGE: All right. Have you
13 been involved in any other hearings
14 with the EEOC with other employees
15 who have brought racial
16 discrimination charges against PHB?

17 THE WITNESS: No.

18 THE JUDGE: Do you supervise
19 Gary Gebhardt?

20 THE WITNESS: I did, yes.

21 THE JUDGE: Is Mr. Gebhardt

1 still an employee of PHB?

2 THE WITNESS: No, ma'am.

3 THE JUDGE: Was he fired or did

4 he voluntarily quit?

5 THE WITNESS: He was fired.

6 THE JUDGE: Could you tell me

7 why he was fired?

8 THE WITNESS: There was a --

9 through the EEOC when they did

10 their evaluations and everything,

11 Gary Gebhardt was interviewed. His

12 interview came through that he had

13 racial discrimination problems and

14 that he had a problem with African-

15 Americans, so that's why he was

16 terminated.

17 THE JUDGE: And how long had Mr.

18 Gebhardt been employed by PHB?

19 THE WITNESS: I would believe he

20 was there for about 33 years.

21 THE JUDGE: An employee of that

1 length, were you aware of the fact
2 that he was causing these types of
3 problems in the workplace?

4 THE WITNESS: I had -- there was
5 times where I was Gary's immediate
6 supervisor. Gary, at times, would
7 call different people names, not
8 just African-Americans, you know,
9 he would be a little rough at times
10 and I would sit down and I had
11 talks with him and everything and
12 at one time, when we got a little
13 slower, he was laid off because of
14 this and this being his people
15 skills and that's why he was laid
16 off and when he came back, we had a
17 talk with him and he got much, much
18 better, you know, he turned right
19 around on that. But then there was
20 one little problem after that where
21 he had supposedly told somebody

1 else that they had to make them
2 work a little harder and he
3 couldn't answer what he meant by
4 "them" and that's what got him into
5 that EEOC hearing and they asked
6 him, I don't know exactly what they
7 asked him, but he didn't come
8 across very well at all through
9 this interview with the EEOC and
10 that's when our company decided
11 that he had a problem that we did
12 not want in our company any longer
13 and they terminated him.

14 THE JUDGE: At 33 years of
15 employment, he would have been
16 eligible for his pension, et
17 cetera, Mr. Gebhardt? Was he at
18 that appropriate age and years of
19 service?

20 THE WITNESS: We don't have a
21 pension.

1 THE JUDGE: So any employees
2 that work for 33 years and retire,
3 they don't get any benefits?

4 THE WITNESS: No, we don't have
5 a pension as far as the company
6 people and that.

7 THE JUDGE: Is there some type
8 of 401(k) type of plan that would
9 be --

10 THE WITNESS: Whatever he has,
11 they have an ESOP. I don't know if
12 he still got that or not.

13 THE JUDGE: Was he in
14 management, Mr. Gebhardt? Was he
15 considered management?

16 THE WITNESS: Yes, ma'am, he was
17 a foreman, a line supervisor.

18 THE JUDGE: He would not have
19 been a union member?

20 THE WITNESS: No, he was not.

21 THE JUDGE: Did you supervise an

1 individual by the name of Tom
2 Thompson?

3 THE WITNESS: For a short period
4 of time, yes, I did.

5 THE JUDGE: What position did
6 Mr. Thompson hold?

7 THE WITNESS: Same position,
8 line supervisor, line foreman.

9 THE JUDGE: Is Mr. Thompson
10 still an employee of PHB?

11 THE WITNESS: Yes, he is.

12 THE JUDGE: Have you ever had to
13 discipline Mr. Thompson for
14 situations involving where he may
15 have racially discriminated against
16 co-employees?

17 THE WITNESS: Have I? No.

18 THE JUDGE: Have you ever
19 received any complaints that Mr.
20 Thompson was racially
21 discriminating against the

1 employees?

2 THE WITNESS: I haven't, no. He
3 went through that one little -- he
4 had some kind of an instance, but I
5 was not involved in that.

6 THE JUDGE: And that was an
7 instance where he was speaking and
8 someone may have used inappropriate
9 language?

10 THE WITNESS: Yes.

11 THE JUDGE: Now, if you
12 supervised him, why were you not
13 involved in that incident?

14 THE WITNESS: I only supervised
15 him for a short period of time. I
16 don't believe he was on my shift
17 when that happened because he moved
18 shifts a couple times.

19 THE JUDGE: Is there an employee
20 by the name of Nick Hazenbek
21 (phonetic).

1 THE WITNESS: Hazenbek.

2 THE JUDGE: Is he a supervisor
3 or is he --

4 THE WITNESS: No, he is a union
5 individual. His classification is
6 called metal man.

7 THE JUDGE: Have you ever had --
8 do you supervise him?

9 THE WITNESS: I did at times,
10 yes.

11 THE JUDGE: During the time that
12 you supervised him, did you ever
13 have to discipline him for
14 allegations of racial
15 discrimination?

16 THE WITNESS: no.

17 THE JUDGE: Did you ever receive
18 any complaints that he had been
19 racially discriminating against
20 employees?

21 THE WITNESS: No.

1 THE JUDGE: Do you supervise
2 Mike Langer?

3 THE WITNESS: I did, yes.

4 THE JUDGE: Is he still an
5 employee of PHB?

6 THE WITNESS: No, ma'am.

7 THE JUDGE: Did he voluntarily
8 quit or was he fired?

9 THE WITNESS: I believe he
10 voluntarily quit?

11 THE JUDGE: Did you have any --
12 did you supervise him? I'm sorry,
13 did I ask you that?

14 THE WITNESS: Yes.

15 THE JUDGE: Did you have any
16 problems with his job performance,
17 Mr. Langer's job performance?

18 THE WITNESS: Yes.

19 THE JUDGE: Do you recall an
20 incident and you may not have been
21 involved in it, but you may have

1 heard of it, where Mr. Langer was
2 operating a machine, he left for
3 the restroom, and as a result,
4 something happened with the machine
5 and parts were spewed all over the
6 floor and someone had to clean up
7 the mess and Mr. Langer was not
8 made to do it, some other
9 individual was made to do it; are
10 you familiar with that?

11 THE WITNESS: No, I'm not.

12 THE JUDGE: Do you know who
13 Shelly Antolik (phonetic) is?

14 THE WITNESS: Yes.

15 THE JUDGE: And what position
16 does she hold?

17 THE WITNESS: She's in human
18 resources.

19 THE JUDGE: At any time did you
20 feel threatened by Mr. Woodard
21 while he was employed there?

1 THE WITNESS: No.

2 THE JUDGE: Is Mr. Camp still
3 employed at PHB, Pat Camp?

4 THE WITNESS: Yes.

5 THE JUDGE: Is he still a union
6 member?

7 THE WITNESS: No.

8 THE JUDGE: At the time that Mr.
9 Woodard was employed there, was Mr.
10 Camp a union steward?

11 THE WITNESS: He was a union
12 steward, yes.

13 THE JUDGE: Do you recall a
14 meeting regarding an allegation
15 that somebody was making farm
16 noises or pig-call noises?

17 THE WITNESS: No.

18 THE JUDGE: How many meetings do
19 you believe that you had that
20 involved Mr. Woodard and the union,
21 a rough estimate?

1 THE WITNESS: Three.

2 THE JUDGE: You don't remember
3 more than three meetings during the
4 time during that time --

5 THE WITNESS: That I was
6 involved in, no.

7 THE JUDGE: The incident that
8 you described where Mr. Woodard
9 indicated that he didn't want you
10 to speak to him directly, but
11 rather through the union steward,
12 what happened as a result of that?
13 Did the union steward back him up?
14 Did the union do anything about
15 that?

16 THE WITNESS: I don't know what
17 he did with that. At that time, I
18 told Dayved that I was his direct
19 supervisor and that if I needed to
20 talk to him, I would. At that
21 time, I excused myself from the

1 area.

2 THE JUDGE: If Mr. Woodard
3 testified that while he was on
4 light duty, you were following him
5 around with a stool, would that
6 basically be inaccurate?

7 THE WITNESS: Yes, ma'am, that
8 is inaccurate.

9 THE JUDGE: Are you familiar
10 with an individual by the name of
11 William Diehl (phonetic), who may
12 have been an electrician hired by
13 PHB?

14 THE WITNESS: Yes.

15 THE JUDGE: He would not have
16 been a PHB employee?

17 THE WITNESS: He is a PHB
18 employee.

19 THE JUDGE: Oh, I'm sorry. You
20 have your own electricians?

21 THE WITNESS: Yes, he works in

the maintenance department. He is one of the electricians.

THE JUDGE: You would not supervise Mr. Diehl?

THE WITNESS: No.

THE JUDGE: As a supervisor in
the aluminum die cast, did you ever
receive any complaints about Mr.
Diehl's behavior while he was in
your department?

THE WITNESS: No, ma'am.

THE JUDGE: Now, you indicated that discrimination is not tolerated, but there's no specific written policy within the employee handbook addressing discrimination to your knowledge?

THE WITNESS: Not to my knowledge, not that I recall.

THE JUDGE: Does PHB have annual, biannual meetings where

1 they discuss such things as racial
2 discrimination or sex
3 discrimination or gender
4 discrimination or age
5 discrimination, that those things
6 are not really tolerated and the
7 employees are trained or --

8 THE WITNESS: No.

9 THE JUDGE: Are you aware of any
10 allegations that Mr. Gebhardt would
11 purposely speed up the cycles of
12 machines just to bother the
13 operators?

14 THE WITNESS: No.

15 THE JUDGE: How long was -- and
16 I assume Kerry Goodwine is a
17 gentleman?

18 THE WITNESS: Yes.

19 THE JUDGE: How long was Mr.
20 Goodwine employed by PHB?

21 THE WITNESS: I'm really not

1 sure. He had to have been there
2 probably somewhere around five
3 years. I'm not really sure.

4 THE JUDGE: And you supervised
5 Mr. Goodwine?

6 THE WITNESS: Yes.

7 THE JUDGE: Did Mr. Goodwine
8 ever bring complaints to you
9 regarding racial discrimination?

10 THE WITNESS: Yes, the one that
11 happened with Mr. Gebhardt, came to
12 me and I had a meeting with that to
13 try to get to the bottom of that,
14 yes.

15 THE JUDGE: Did that involve a
16 union meeting as well?

17 THE WITNESS: I had the union
18 steward there involved, yes.

19 THE JUDGE: Thank you, Mr.
20 Sayers, those are all the questions
21 I have.

Attorney Petersen, any follow-up?

MS. PETERSEN: No, I have nothing further.

THE JUDGE: Attorney Johnson?

MR. JOHNSON: Nothing further,
Sir Honor.

THE JUDGE: You may step down.

Let's take a ten-minute break here to allow restroom use and then you can call your next witness.

(Whereupon, a brief recess was taken.)

THE JUDGE: Please raise your right hand. Please have a seat. You may proceed with this witness.

* * *

REX RYAN,

called as a witness on behalf of the Employer, and having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. PETERSEN:

Q Please state your name.

A Rex Ryan, R-y-a-n.

Q Are you employed by PHB?

A Yes, I am.

Q What's your title there?

A General foreman.

Q Are you familiar with the claimant in
this case, Mr. Dayved Woodard?

A Yes.

Q How are you familiar with him?

A He was one of my operators.

Q Okay. When he worked there, were you also a general foreman at the time or did you have a different position?

A 'I was a general foreman.

Q Okay. What was your position in relation to Mr. Woodard? Were you his direct supervisor?

A I was his direct supervisor.

1 Q Okay. And he worked from February '98
2 until 2003 -- or, yes, 2003; correct?

3 A As far as I know, yes.

4 Q Now, were you one of his supervisors
5 during this time?

6 A Yes.

7 Q Okay. Now, Ron Sayers just testified in
8 this matter. What's your relation to
9 him? Are you the same --

10 A I'm the same thing he was, but I was one
11 shift and he was on the other.

12 Q Did you rotate shifts with him?

13 A Yes.

14 Q You worked in the same department?

15 A Yes.

16 Q And he indicated that he was involved in
17 assigning jobs to the employees in that
18 department. Did you do that as well?

19 A Yes, I did.

20 Q And did you personally observe the people
21 in your department as they worked?

1 A Yes.

2 Q Including Mr. Woodard?

3 A Yes, I did.

4 Q Now, did you have the same expectations
5 from Mr. Woodard's work as you did for
6 the other employees?

7 A Yes, I did.

8 Q There wasn't anything different?

9 A Hmm-um.

10 Q No?

11 A No.

12 Q Okay, you need to say yes or no.

13 A Sorry.

14 Q In your opinion, how was Mr. Woodard's
15 work performance?

16 A He didn't act very aggressive, just very
17 slow, didn't act -- the type of job that
18 he had, the machine, you have to keep up
19 with the machine and Dayved had problems
20 doing that. He just -- didn't act to me
21 like he wanted to do it, that was my

1 impression.

2 Q What was his attitude towards work, your
3 impression?

4 A Well, he never got mad. You always had
5 to keep telling him to keep the machines
6 running.

7 Q Okay.

8 A Complained a lot, things like that.

9 Q Now, Mr. Sayers testified that he would
10 occasionally see Mr. Woodard absent from
11 his machine. Did that happen with you as
12 well?

13 A If he asked for a break and sometimes he
14 would walk off and be over here doing
15 this or that when the machine was running
16 by itself and we didn't like that.

17 Q Was there a problem with the machine
18 running by itself?

19 A If it broke down or things like that or
20 they had an oil leak or some kind of
21 mechanical problem, there could be other

1 problems.

2 Q And did you say anything to Mr. Woodard
3 about --

4 A Yes, I told him to go back to his
5 machine.

6 Q Did you have to do this repeatedly or
7 just one time?

8 A Off and on.

9 Q Now, when Mr. Woodard worked at PHB, did
10 any of his coworkers complain to you
11 about him and his work performance?

12 A No.

13 Q Now, did you ever work at PHB at the same
14 time as Ron Sayers?

15 A Yes.

16 Q Did you ever observe Mr. Sayers picking
17 on or harassing Mr. Woodard?

18 A When Mr. Sayers was working, I was at
19 home.

Q Okay. So you didn't see him working?

21 A No.

1 Q Did you ever observe Mr. Sayers using
2 racial slurs or derogatory remarks?

3 A No.

4 Q Towards Mr. Woodard?

5 A No.

6 Q Did you ever observe any supervisor or
7 coworker using racial slurs, making
8 derogatory remarks about Mr. Woodard or
9 to Mr. Woodard?

10 A No.

11 Q Did you ever notice any of the
12 supervisors or employees picking on or
13 harassing Mr. Woodard?

14 A No.

15 Q Did Mr. Woodard ever complain to you
16 directly about being treated unfairly at
17 PHB?

18 A No.

19 Q Now, Mr. Woodard had previously testified
20 about an incident involving an individual
21 named Mike Langer and I think he relieved

4 A Yes.

5 Q Can you tell me what happened?

6 A It was at dinnertime. Dayved went to
7 lunch and I had Mike Langer relieve his
8 machine. We was keeping it running on a
9 continuous basis and Dayved called me
10 over and said look at the mess and I
11 walked over and there was castings laying
12 all over and I told Dayved, I said -- he
13 did complain to me about what happened
14 and I told him to clean up the mess,
15 start it back up, and I'll go talk to
16 Mike Langer.

17 Q And what did you say to Mike Langer?

18 A I asked him what happened. He said, oh,
19 I was just having problems and this and
20 that and I told him just don't do it
21 again. That was basically the extent of

1 it.

2 Q Did you hear Mike Langer or Dayved
3 arguing or talking?

4 A No.

5 Q Did you walk away from Dayved laughing?

6 A No.

7 Q Did you ever see Mike doing this thing to
8 other machines, leaving the parts on the
9 floor?

10 A Yes, he was known for that.

11 Q So this wasn't just to Mr. Woodard?

12 A No.

13 Q Did you ever hear Mr. Langer make any
14 racist remarks to Mr. Woodard?

15 A No, I didn't.

16 THE JUDGE: I'm sorry, what was
17 the question?

18 MS. PETERSEN: Did you hear Mr.
19 Langer making any racist remarks
20 towards Mr. Woodard?

21 THE JUDGE: And your answer

1 was?

2 | THE WITNESS: No.

3 THE JUDGE: Thank you.

4 BY MS. PETERSEN:

5 Q Now, do you recall an incident in which
6 you had told Mr. Woodard to write a
7 letter to be placed in his file because
8 he had cracked some taps on a die?

9 A Yes, he didn't locate the casting right.

10 The first time he did it, I just chewed
11 him out, I guess, or whatever you want to
12 call it and the second time, he did it,
13 which was about ten or 15 minutes later,
14 I told him you have to write me up a
15 letter in your own words what happened
16 and basically that's what it was.

17 Q And then the letter would go in his file?

18 A Went up to personnel.

19 Q Now, is this a policy of the company?

20 A Yes.

21 Q This isn't something that you made up

1 with Mr. Woodard?

2 A No.

3 Q Did you ask other people to do similar
4 types of letters?

5 A Um-hmm.

6 Q Yes?

7 THE JUDGE: You need to say yes
8 or no.

9 THE WITNESS: Yes. Sorry about
10 that.

11 THE JUDGE: You need to let her
12 finish her question before you
13 start answering.

14 THE WITNESS: Okay.

15 BY MS. PETERSEN:

16 Q Did you tell him to write the letter
17 because of his race?

18 A No.

19 Q Now, Mr. Woodard had also testified that
20 he was constantly given more difficult
21 jobs to do than other employees in his

1 area. Now, as a supervisor and I think
2 you said you were responsible for
3 assigning jobs to him, is this accurate?

4 A No, we assign the jobs as they came
5 along.

6 Q Were you involved in a meeting regarding
7 Mr. Woodard's complaints about his job
8 assignments?

9 A No.

10 Q Do you recall anything like that?

11 A No.

12 Q Did he ever come to you directly with any
13 types of complaints, be it his job
14 assignments or problems with other
15 coworkers or supervisors?

16 A Well, he'd ask me off and on why do I
17 have to run this or why do I have to run
18 that, that's just the way his job was. I
19 mean it changed from day to day. He
20 might be on this machine one day, this
21 machine the next day. I remember one

1 time he did ask me why do I have to run
2 this machine? Why don't you let the new
3 people run it? I told him we did the
4 same thing with you, we started all the
5 new people out on the least difficult
6 machines and as you progress, the longer
7 you're there, the more you run the
8 machines, we advance you up to the bigger
9 ones so you can run anything in the
10 place.

11 Q So did you specifically set up to give
12 him more difficult jobs or machines to
13 do?

14 A No.

15 Q Do you recall attending any meetings with
16 Mr. Woodard and members of management and
17 union representatives regarding his
18 complaints?

19 A No.

20 Q Now, during the time Mr. Woodard worked
21 at PHB, did any of his coworkers complain

1 to you about him?

2 A We talked amongst ourselves that he was
3 always leaving machines and things like
4 that. We would give him a ten-minute
5 break and he might not come back for half
6 an hour and we'd have to go look for him,
7 things like that.

8 Q Do you recall Mr. Woodard being off work
9 for a shoulder injury for about a year?

10 A Yes.

11 Q Did you ever see him stop into the shop
12 during this time?

13 A Yes, he came in and got his check.

14 Q Did you ever talk to him during this
15 time?

16 A No.

17 Q But you did see him?

18 A Yes.

19 Q Did he seem not happy to be at the shop
20 to you or uncomfortable?

21 A Basically he just walked by me and never

1 said anything.

2 Q Okay. Now, in the bathrooms at PHB, did
3 you ever see pictures of a cross burning
4 or KKK on the bathroom?

5 A No.

6 Q Did you ever see any racist or racial
7 slurs written in the bathrooms?

8 A No.

9 MS. PETERSEN: I think that's
10 all I have. Thank you, Mr. Ryan

11 THE JUDGE: Cross.

12 MR. JOHNSON: Thank you, your
13 Honor.

14 * * *

15 **CROSS-EXAMINATION**

16 BY MR. JOHNSON:

17 Q Your testimony is you did not see a
18 burning cross or KKK written in the
19 bathroom; correct?

20 A Yes.

21 Q Are you aware -- did you ever hear

1 anything about that written in the
2 bathroom?

3 A The first time I found out about it is
4 when this all came about.

5 Q Okay. Nobody ever made any complaints to
6 you?

7 A No.

8 Q There was never a memo or anything from
9 management about --

10 A Well, we had them periodically through
11 the years I've been there.

12 Q But there was nothing specific in regards
13 to this allegation that there was a
14 burning cross and a KKK written in the
15 bathroom?

16 A Not that I can remember.

17 Q And the first time you heard about this
18 is when you got involved in this?

19 A Yes.

20 Q Is that something you should have been
21 made aware of?

1 A I would think so, yes, but I might have
2 been.

3 Q Fair enough. Mike Langer, you talked
4 about an incident with Mr. Woodard and
5 Mr. Langer and I think you said Mr.
6 Langer had a propensity to leave parts
7 all over the place?

8 A Yes.

9 Q You went and talked to Mr. Langer because
10 there was a mess in front of Mr.
11 Woodard's machine?

12 A Yes, I did.

13 Q Did Mr. Langer have to help clean up the
14 mess that he made?

15 A No, he didn't.

16 Q Did Mr. Langer receive any sort of
17 discipline for the mess that he made?

18 A I basically just asked him why he did it
19 and he would just shake his shoulders,
20 this type of thing, and I told him do not
21 do it again.

1 Q Just kind of like a who cares-type of
2 thing?

3 A Basically on his part, yes.

4 Q That was the end of the incident as far
5 as you were concerned?

6 A Right, but he had done it not only to
7 Dayved, but other times during his course
8 of employment.

9 Q Your testimony is that Mr. Woodard made
10 no complaints to you?

11 A Not that I can remember, no.

12 Q He made absolutely no complaints about
13 how he felt he was treated differently?

14 A No.

15 Q Did you ever tell him to go file a report
16 if he thought he was discriminated
17 against?

18 A No.

19 Q You participated in no meetings in
20 regards to Mr. Woodard's complaints?

21 A None that I can remember.

1 Q And your testimony is you're not even
2 aware of him having any complaints?

3 A No.

4 Q Are you aware of any racial --
5 allegations of racial slurs in the
6 workplace?

7 A I imagine there probably is, but nothing
8 against Dayved.

9 Q Are you aware of an incident with a Mr.
10 Thompson? Let me ask you this, do you
11 know who Mr. Thompson is?

12 A No.

13 Q Is there a foreman named Tom Thompson at
14 PHB?

15 A Yes.

16 Q Are you aware of a time when Mr. Thompson
17 would have said something that was racial
18 in nature?

19 A No.

20 Q So obviously there was no investigation
21 or anything done if you're not --

1 A Not on my part, no.

2 Q Would you be Mr. Thompson's supervisor?

3 A No.

4 Q Is he above or below you?

5 A Below.

6 Q Who would be Mr. Thompson's supervisor?

7 A It would Mark Nye (phonetic) on the zinc
8 department.

9 Q And you can't testify in any way really
10 to the relationship between Mr. Woodard
11 and Ron Sayers because you basically
12 worked opposite shifts?

13 A Yes.

14 Q When you're there, he's not and when Mr.
15 Sayers is at work, you're not?

16 A Right, yes.

17 Q Is it fair to summarize your testimony
18 that you had no knowledge of Mr.
19 Woodard's complaints of discrimination
20 while he was working at PHB?

21 A Yes.

1 Q Are you aware of anyone else making
2 complaints of racial discrimination at
3 PHB?

4 A I heard about the Kerry Goodwine thing.

5 Q Who did you hear that from?

6 A Just like a rumor mill-type thing.

7 Q Were you part or did you participate in
8 any way in regards to the EEOC
9 investigation of Mr. Woodard's
10 complaints?

11 A Yes.

12 Q What about Mr. Goodwine's complaints?

13 A I never had any problems with Kerry. In
14 fact, the day that he left, he come up to
15 me and shook my hand.

16 Q My question is did you participate in the
17 EEOC investigation in regards to Mr.
18 Goodwine's complaints?

19 A No.

20 Q Are you aware of anyone else filing a
21 discrimination suit except for Mr.

1 Goodwine and Mr. Woodard?

2 A Just Mr. Goodwine.

3 Q Were you ever made aware of a
4 discrimination suit filed by a Mr.
5 Jackson?

6 A Yes.

7 Q Do you know anything about that suit?

8 A Just what I heard. He worked in a
9 different department than I did.

10 Q What you heard, was it the same basic
11 allegations that Mr. Woodard has made?

12 A Geez, it's been so long.

13 Q Fair enough. After the suit was filed by
14 Mr. Jackson or the complaints to the EEOC
15 made by Mr. Woodard, did PHB do anything?
16 Were there meetings with you or the other
17 supervisors in regards to allegations of
18 discrimination or how you should conduct
19 yourself or how employees should be made
20 to act?

21 A Not that I can remember.

1 MR. JOHNSON: Okay, I don't
2 have any further questions.

3 MS. PETERSEN: I just had one
4 other question.

5 * * *

6 **REDIRECT EXAMINATION**

7 BY MS. PETERSEN:

8 Q Mr. Ryan, do you recall an incident where
9 Mr. Woodard, I guess, got up to go to the
10 bathroom and someone in the department
11 yelled, soo-ee (phonetic)? Do you recall
12 anything like that?

13 A No.

14 Q So you didn't receive any complaints
15 about that?

16 A No.

17 MS. PETERSEN: That's all I
18 have.

19 THE JUDGE: How long have you
20 been employed at PHB?

21 THE WITNESS: 39 years.

1 THE JUDGE: How long have you
2 been a foreman?

3 THE WITNESS: 27.

4 THE JUDGE: 37 years?

5 THE WITNESS: 27 years.

6 THE JUDGE: 27 years. Are you
7 familiar with an individual by the
8 name of Gary Gebhardt?

9 THE WITNESS: Yes.

10 THE JUDGE: Did you supervise
11 Mr. Gebhardt?

12 THE WITNESS: At one time, I
13 did, yes.

14 THE JUDGE: Mr. Gebhardt is no
15 longer employed by PHB; is that
16 correct?

17 THE WITNESS: Yes.

18 THE JUDGE: Do you understand
19 whether or not he voluntarily quit
20 or was he terminated?

21 THE WITNESS: My understanding

1 was he was terminated.

2 THE JUDGE: Do you understand

3 why he was terminated?

4 THE WITNESS: Because he made a

5 racial remark.

6 THE JUDGE: While you were

7 employed there, did you ever note

8 Mr. Gebhardt to make racial

9 comments?

10 THE WITNESS: No.

11 THE JUDGE: You testified that

12 to your knowledge no one ever made

13 racial slurs in the workplace; is

14 that correct?

15 THE WITNESS: Yes.

16 THE JUDGE: You're going to tell

17 me that during the 39 years that

18 you were employed at PHB, you never

19 heard of any racial comments being

20 made?

21 THE WITNESS: I would imagine

1 probably has been off and on, but I
2 don't pay any attention to it
3 because that stuff happens all the
4 time in every place you work.

5 THE JUDGE: What policy does PHB
6 have with regard to racial
7 discrimination and racial slurs
8 being used in the workplace?

9 THE WITNESS: It's not supposed
10 to happen.

11 THE JUDGE: Did you ever have to
12 discipline anyone, co-employee or
13 subordinate for racial
14 discrimination or using racial
15 slurs in the workplace?

16 THE WITNESS: No.

17 THE JUDGE: Does Mr. Sayers have
18 an equal position to yours or does
19 he supervise you?

20 THE WITNESS: No, he's the same
21 as I am.

1 THE JUDGE: Mr. Sayers testified
2 that you guys alternate shifts?

3 THE WITNESS: Yes.

4 THE JUDGE: So generally you
5 would equally supervise Mr. Woodard
6 as much as Mr. Sayers would; is
7 that correct?

8 THE WITNESS: Yes, every other
9 week.

10 THE JUDGE: And Mr. Woodard
11 never came to you with any
12 complaints with regard to his job
13 assignments or his feelings that he
14 was being discriminated against?

15 THE WITNESS: Not being
16 discriminated, but he complained
17 all the time about what machines he
18 had to run, why he had to run them
19 and things like that.

20 THE JUDGE: Can you tell me was
21 Mr. Langer formally disciplined for

1 the incident involving the machine
2 that he relieved Mr. Woodard from?

3 THE WITNESS: What I did was I
4 went and talked to him and asked
5 him why he done it and he just
6 shrugged his shoulders like that,
7 like I don't care. I couldn't
8 discipline.

9 THE JUDGE: Why couldn't you
10 discipline?

11 THE WITNESS: Well, basically
12 all I told him was just don't do it
13 again.

14 THE JUDGE: All right. Is that
15 something that you tolerate,
16 individuals letting machines spew
17 parts all over the place?

18 THE WITNESS: No, that's why I
19 told him just don't do it again.

20 THE JUDGE: Well, why did you
21 tolerate in on this specific

1 occasion?

2 THE WITNESS: Because it

3 happened without my knowledge. I

4 did go and tell him about it.

5 THE JUDGE: Now, you said Mike

6 was known for this. So it appears

7 that he has a history for doing

8 this. Listen to my question, was

9 he at any time disciplined for that

10 type of action?

11 THE WITNESS: No.

12 THE JUDGE: Can you tell me why

13 Mr. Langer was allowed to behave

14 like that and was not disciplined?

15 THE WITNESS: It depends on what

16 you mean by disciplined.

17 THE JUDGE: I mean oral warning,

18 I mean written warning, I mean a

19 letter in the file that explains

20 his behavior.

21 THE WITNESS: An oral warning,

1 yes.

2 THE JUDGE: Was that the extent
3 of the discipline that Mr. Langer
4 received?

5 THE WITNESS: Yes, from me, yes.

6 THE JUDGE: And how many
7 occasions on your shift, did Mr.
8 Langer behave in this fashion?

9 THE WITNESS: That's the only
10 one I can think of.

11 THE JUDGE: Is Mr. Langer still
12 employed there?

13 THE WITNESS: No.

14 THE JUDGE: Did he voluntarily
15 quit or was he fired?

16 THE WITNESS: He voluntarily
17 quit.

18 THE JUDGE: Can you tell me why
19 Mr. Langer was not made to clean up
20 the mess that he made?

21 THE WITNESS: Because he was at

1 dinner at the time. Dayved told me
2 when I came back from dinner.

3 THE JUDGE: Is that type of
4 behavior tolerated from other
5 employees?

6 THE WITNESS: No.

7 THE JUDGE: How long had Mr.
8 Langer been employed at PHB?

9 THE WITNESS: I'm -- probably
10 five to ten years.

11 THE JUDGE: During the time that
12 you would have supervised Mr.
13 Woodard, there were never any
14 meetings with the union called
15 because of complaints that Mr.
16 Woodard may have had during the
17 shift that you were supervising?

18 THE WITNESS: Not that I was
19 involved in.

20 THE JUDGE: In your capacity as
21 a foreman, are you involved in

1 meetings that involve grievances or
2 complaints by employees with the
3 union?

4 THE WITNESS: If I'm involved,
5 yes.

6 THE JUDGE: By being involved,
7 you mean if it's something that
8 involves a situation that you were
9 part of, is that what you mean?

10 THE WITNESS: Yes.

11 THE JUDGE: You would not be
12 called in as a general supervisor
13 or manager or anything like that to
14 participate in the meeting?

15 THE WITNESS: No.

16 THE JUDGE: Is Mr. Butch Smith,
17 he would be above you; is that
18 correct?

19 THE WITNESS: Yes, he was my
20 boss.

21 THE JUDGE: Did Mr. Smith ever

1 call you in for a meeting or have
2 discussions with you of any
3 complaints that Mr. Woodard had?

4 THE WITNESS: No.

5 THE JUDGE: Do you ever recall
6 having a meeting in 2000 involving
7 yourself, the claimant, and Rick
8 Bartosick (phonetic)?

9 THE WITNESS: No, I don't.

10 THE JUDGE: Involving an
11 incident where the claimant, Mr.
12 Woodard, may have lost his temper
13 with Mr. Sayers?

14 THE WITNESS: Not that I can
15 remember, no.

16 THE JUDGE: Have you, yourself,
17 ever been disciplined for
18 allegations of racial
19 discrimination?

20 THE WITNESS: No.

21 THE JUDGE: Have there ever been

1 any charges brought against you?

2 THE WITNESS: No.

3 THE JUDGE: Alleging that you
4 racially discriminated against
5 employees?

6 THE WITNESS: No.

7 THE JUDGE: Did you consider Mr.
8 Gebhardt to have a problem that he
9 on occasion would make racial
10 comments while at work?

11 THE WITNESS: No.

12 THE JUDGE: Were you surprised
13 that they decided to fire him after
14 33 years of employment?

15 THE WITNESS: No, I wasn't
16 surprised.

17 THE JUDGE: Why weren't you
18 surprised?

19 THE WITNESS: Because he said or
20 what he did, what it involved,
21 probably should have been.

1 THE JUDGE: Do you know if that
2 was the only incident or something
3 similar to that occurring with Mr.
4 Gebhardt?

5 THE WITNESS: Yes.

6 THE JUDGE: To your knowledge,
7 that was the only incident?

8 THE WITNESS: Yes.

9 THE JUDGE: You don't remember
10 there being a prior history of him
11 having similar problems?

12 THE WITNESS: Not to my
13 knowledge.

14 THE JUDGE: And you would have
15 worked with him during the 39 years
16 that you were employed?

17 THE WITNESS: Yes.

18 THE JUDGE: And 27 of those
19 years, you were a supervisor;
20 right?

21 THE WITNESS: Yes.

1 THE JUDGE: Those are all the
2 questions I have. Ms. Petersen,
3 any follow-up?

4 MS. PETERSEN: Just one
5 question actually.

6 BY MS. PETERSEN:

7 Q As to Mike Langer, during the time he was
8 there, the five or ten years, did he have
9 this problem with letting the parts fall
10 on the floor the entire time?

11 A Off and on. He was a disciplinary
12 problem-type person.

13 Q Was he talked to during this time by
14 yourself?

15 A By myself, yes.

16 Q How about other supervisors? Did they
17 talk to him?

18 A As far as I know, yes.

19 MS. PETERSEN: Okay, that's all
20 I have.

21 MR. JOHNSON: Just a few, your

1 Honor.

2 * * *

3 **RECROSS-EXAMINATION**

4 BY MR. JOHNSON:

5 Q And this involves Mr. Langer again. You
6 testified that there were parts all over
7 the floor?

8 A A few laying on the floor.

9 Q What kind of parts were those?

10 A The casting that the machine was running
11 at the time.

12 Q And you did not make Mr. Langer put any
13 sort of note into his file?

14 A No. Basically all I did was I asked him
15 why he did that.

16 Q Did you ever ask Mr. Woodard to put any
17 notes in his file?

18 A Yes, with the incident with the
19 mislocated casting.

20 Q Where he what?

21 A He had to slip a casting into a fixture

1 and drill four holes and he misplaced
2 them twice.

3 Q Is that the only time you've had him put
4 anything in his file?

5 A That I can remember, yes.

6 MR. JOHNSON: That's all I have.

7 THE JUDGE: You may step down.

8 Next witness.

9 MS. PETERSEN: I'll go get him.

10 THE JUDGE: Raise your right
11 hand. Please have a seat. you may
12 proceed with this witness.

13 * * *

14 LOREN SMITH,

15 called as a witness on behalf of the
16 Employer, and having been previously
17 duly sworn, was examined and testified
18 as follows:

19 **DIRECT EXAMINATION**

20 BY MS. PETERSEN:

21 Q Would you please state your name.

1 A Loren Smith.

2 Q And do you also go by Butch?

3 A Butch.

4 Q Are you employed by PHB?

5 A Yes, I am.

6 Q What's your title there?

7 A Currently plant engineer.

8 THE JUDGE: Sir, how do you
9 spell your first name?

10 THE WITNESS: L-o-r-e-n.

11 THE JUDGE: Thank you.

12 BY MS. PETERSEN:

13 Q And how long have you held that title?

14 A Plant engineer?

15 Q Um-hmm.

16 A Currently I've held that for about a year
17 and before, I had it for about 17 years,
18 18 years, somewhere in there. I've been
19 there a total of 20 years.

20 Q So what were you before you were plant
21 engineer?

1 A I was manager of die cast.

2 Q How long were you manager of that die
3 cast?

4 A From 2000 to the end of 2003, beginning
5 of 2004.

6 Q So how were you in relation to Ron Sayers
7 and Rex Ryan?

8 A I was their direct supervisor.

9 Q When you were manager of die cast?

10 A Yes.

11 Q You're no longer their supervisor?

12 A That's correct.

13 Q Okay. Now, are you familiar with the
14 claimant in this case, Mr. Dayved
15 Woodard?

16 A Yes.

17 Q How are you familiar with him?

18 A Well, Dave worked out in the department
19 as DCPO production operator.

20 Q And you were one of his supervisors for
21 that department?

1 A That's correct.

2 Q Did you ever have any direct contact with
3 Mr. Woodard as he worked there?

4 A Not in the sense of like day-to-day
5 assigning work or checking on the work or
6 anything of that kind of thing. As I
7 traveled through the department and my
8 work, I would see Dave and say hi or
9 how's the job going, things like that.

10 Q So you knew him to talk to him?

11 A Yes.

12 Q You saw him working?

13 A Yes.

14 Q How often were you in his department when
15 he was there?

16 A I was in the department all the time, but
17 at the time, I believe Dave was on second
18 shift and was not out there a lot.

19 Q Okay. What was your impression of how he
20 worked, his work performance?

21 A As far as his work performance was

1 concerned, I don't recall any complaints
2 or any incidents where there was a
3 problem as far as his work performance,
4 the quality of his parts or anything like
5 that.

6 Q How about his attitude?

7 A There were other issues that came up that
8 Rex or Ron brought to me, yes.

9 Q Now, during your personal observation of
10 Mr. Woodard and any conversations that he
11 may have had with coworkers, supervisors,
12 did you ever hear or see any of the
13 supervisors or coworkers making
14 derogatory or racial comments towards
15 him?

16 A No, I did not.

17 Q Did you ever observe any of his
18 supervisors singling him out, harassing
19 him, or making life difficult for him as
20 he worked there?

21 A No, I did not.

1 Q Now, Mr. Woodard testified there were
2 several meetings that he placed you at
3 the meetings with union representatives
4 and some of his supervisors regarding
5 complaints that he had of his treatment
6 by a supervisor. Do you recall these
7 meetings?

8 A Yes, I do.

9 Q What meetings do you recall?

10 A I recall a couple where Dayved had some
11 complaints, some issues, and we met in my
12 office. There was Ron Sayers was there,
13 Dayved, and Pat Camp and myself and I
14 asked Dayved at the time to state his
15 concerns and issues and so we can discuss
16 them, get them out in the open. At the
17 time, and I'm not sure of the date or the
18 exact time, I believe it was in 2001, I'm
19 not sure, I did document them, but
20 Dayved's concern at that time was that
21 Ron had been picking on him or singling

1 him out, as you said earlier, and
2 specifically giving him more difficult
3 jobs and not keeping Dayved in the
4 rotation of the jobs. That was one
5 specific claim that was made. And I
6 believe quench job was mentioned, also,
7 if I'm not mistaken.

8 Q What is that again?

9 A quench job. It's a job where the
10 casting comes out of the machine and it's
11 very hot and have to quench it in a water
12 solution, cool it down to cool the
13 casting down and sometimes if the weather
14 is cold or after a lengthy period of time
15 working in the quench, it's not the most
16 desirable job to have, and guys don't
17 like that, so you kind of rotate the guys
18 around so everybody has a chance to work
19 those kind of jobs.

20 Q What was done at the meeting in response
21 to these complaints that he had?

1 A After the meeting, first of all, I sat
2 down with Ron one-on-one and we discussed
3 it and I talked to Ron, got his side of
4 that. Then I went over to the
5 dispatcher's office, I went through the
6 jobs that Dayved had been assigned to and
7 I had gone back through the computer
8 records to look and see if we saw that
9 Dayved had been assigned to a
10 particularly bad job, a heavy job, or not
11 been in the rotation like everybody else.

12 Q And what did you conclude after looking
13 at --

14 A Well, I went back about three-and-a-half,
15 four weeks through the computer records
16 and found that I couldn't differentiate
17 any difference between Dayved's work
18 record, you know, the jobs he had been
19 assigned to or anybody else. I picked
20 several names at random just to look and
21 I couldn't see anything that stood right

1 out.

2 Q Were these white employees that you
3 picked at random?

4 A Yes, they were.

5 Q Okay.

6 A Sometimes just because you get assigned
7 to a job, sometimes what happens is that
8 job may break down and you'll get pulled
9 off that job and put on the next
10 available job. It may be a good job, it
11 may not be, it just depends on how things
12 go. So you may see a lot of changes in
13 jobs from day-to-day, but you may end up
14 working on jobs where a machine will
15 break down and the next thing you know,
16 you get put on this job. So there's a lot
17 of change that happens.

18 Q So what happened after the meeting? How
19 were these complaints addressed?

20 A At that particular time, I dismissed the
21 claim.

1 Q Why?

2 A Well, I didn't feel there was any
3 substance to it to be honest with you. I
4 checked the records. The computer showed
5 me that his work performance or the jobs
6 he had been given weren't any different
7 than anybody else.

8 Q Did you discuss this with the union
9 representative that was there at the
10 meeting?

11 A I didn't go back to Pat and discuss this.
12 I did not go back to Dayved and I wish I
13 had gone back and told Dayved that I did
14 check into it and found -- I didn't see
15 any substance to it.

16 Q Were there any other meetings that you
17 recall attending?

18 A Yes. There was another one after that, I
19 don't know, three, six months later, I'm
20 not sure of the exact date. And it was
21 again about the harassment or, if you

1 will, that Ron was picking on Dayved.

2 Dayved had asked at one time to be
3 included on the Rex Roth team and at that
4 time, he had addressed me about it and I
5 had talked to Ron about that, about
6 putting him on that team. And at that
7 time, the team had already been formed
8 and it was also right in the time period
9 when the team concept in there was kind
10 of fading away, the teams weren't meeting
11 as often. And, in fact, I'm not even sure
12 the Rex Roth team met after that or not
13 to be quite honest with you. So that was
14 another issue that had been addressed.

15 Q Do you recall any other meetings that you
16 attended in response to Mr. Woodard's
17 complaints?

18 A No, those were the only three that I
19 recall.

20 Q Do you recall attending any meetings in
21 which racial discrimination was brought

1 up by Mr. Woodard or anybody else in the
2 meeting?

3 A No.

4 Q Now, did Mr. Woodard come to you
5 indicating that there was a picture of a
6 burning cross with KKK in the bathroom?

7 A I don't recall Dayved coming directly to
8 me, but I do remember the incident, yes.

9 Q Did you personally do anything when you
10 heard this?

11 A Yes, I did. I immediately went to the
12 restroom that was in question, the men's
13 room there, and I looked in that restroom
14 and I did not see anything on the walls.

15 I then went, I did go to a second men's
16 room, the larger shower room/restroom,
17 and looked in there. Now, there was
18 derogatory stuff written on the wall, but
19 there was nothing racist or directed
20 toward Dayved individually, okay.

21 Q What type of derogatory things were on

1 the wall?

2 A Well, there's stuff written about other
3 workers, you know, the guys will write
4 something on there maybe about a football
5 teams sometimes, that kind of stuff.

6 Q Nothing about Dayved?

7 A Nothing about Dayved. I also asked Rod
8 Berry about that. Rod Berry is our
9 janitor and asked him, because Rod is
10 very good about covering that stuff over
11 as soon as he sees it and I asked him if
12 he had seen anything --

13 MR. JOHNSON: I'm just going to
14 make an objection if he's going to
15 say what Rod Berry said.

16 MS. PETERSEN: Rod is going to
17 be testifying as well.

18 THE JUDGE: I'll allow it then.

19 BY MS. PETERSEN:

20 Q You may continue.

21 A I asked Rod about that and Rod had not

1 seen anything in that particular restroom
2 and so I thought, well, maybe I missed
3 it, somebody already painted over it.
4 Rod had had a habit through the years
5 when I was the plant engineer prior to
6 becoming a departmental manager there,
7 Rod had had a habit of taking myself into
8 the restroom and showing me these kind of
9 writings if they were really serious or
10 if they're extremely derogatory. He
11 would take me in and show me.

12 Q What kind of writings are you referencing
13 that would be really derogatory?

14 A Oh, something with a lot of foul language
15 directed at a supervisor, things like
16 that.

17 Q Okay. Did you ever receive any complaints
18 from Mr. Woodard directly regarding Mr.
19 Sayers treating him unfairly or picking
20 on him?

21 A Well, yes, those led up to those

1 meetings.

2 Q Okay, so he complained to you directly?

3 A I believe he said something to me out on
4 the floor one day, I was passing by him
5 and I think we talked about it.

6 Q Then you had the meeting?

7 A But then we had the meeting.

8 Q Did any other coworkers in Ron Sayers'
9 department have complaints to you about
10 Mr. Sayers?

11 A There was one other employee in
12 particular that had a clash with Ron
13 where it was like a personality conflict,
14 if you will.

15 Q What were that person's complaints?

16 A He felt that just Ron picked on him.

17 Q In what way?

18 A I don't know, maybe just constantly
19 harassing him. This other employee was a
20 first shift employee and he never
21 complained to me about the jobs that he

1 was given, it was that kind of -- he just
2 felt Ron kind of looked after him too
3 much and was hounding him.

4 Q Was that person black?

5 A No.

6 Q White?

7 A Yes.

8 Q Any other complaints about Ron that you
9 received?

10 A No, those are the only two.

11 Q Any complaints about Rex Ryan?

12 A No.

13 MS. PETERSEN: Okay, that's all
14 I have. Thank you.

15 THE JUDGE: You may cross.

16 MR. JOHNSON: Thank you, your
17 Honor.

18 * * *

19 **CROSS-EXAMINATION**

20 BY MR. JOHNSON:

21 Q Is it fair to say that all the meetings

1 you had with regard to Mr. Woodard were
2 based on his complaints of his job
3 assignments?

4 A Job assignment or inclusion with the Rex
5 Roth team, yes. He did mention that
6 particularly.

7 Q Were there any meetings as to Mr.
8 Woodard's complaints about racial slurs?

9 A In one of those meetings, that did come
10 up, yes. He mentioned the "N" word that
11 had been mentioned out on the floor.

12 Q What was the result of the meeting where
13 Mr. Woodard brought up the use of racial
14 slurs?

15 A I went out and I talked to the various
16 supervisors in that area and no one could
17 back up Dayved's claim that they had
18 heard that word or heard any of that
19 stuff going on. I was trying to
20 substantiate his claim.

21 Q Your testimony is you were never able to

1 substantiate the claim?

2 A That's right.

3 Q Do you recall who it was alleged that
4 made the racial slurs?

5 A It was never mentioned who made the slur
6 that I recall.

7 Q Are you aware of any instances where
8 anybody was using racial slurs?

9 A No, sir.

10 Q Do you know who Tom Thompson is?

11 A Sure, yes, I do.

12 Q Who is he?

13 A He's currently a supervisor or a line
14 foreman.

15 Q All right.

16 A At PHB.

17 Q Would he be under you?

18 A At that time?

19 Q At that time.

20 A Yes.

21 Q Are you aware of any racial slurs made by

1 him?

2 A No, sir, I'm not.

3 Q If there were allegations of racial slurs
4 made by a foreman or line supervisor, who
5 would do the investigation into that?

6 Would that be your responsibility?

7 A Well, if it was brought to my attention,
8
9 I would do an initial investigation, but
10 then I would immediately go to Mr.
11 Hancock with it.

11 Q Who is Mr. Hancock?

12 A Ben Hancock, he's in charge of personnel,
13 human resources.

14 Q Is there a written procedure for an
15 employee to follow if they have
16 complaints about racial slurs or problems
17 with discrimination?

18 A Well, at that time, I'm not aware of any
19 policy at that time. We have a
20 harassment policy now at the shop.

21 Q But there was nothing in place during the

1 time?

2 A I wasn't aware of any, no.

3 Q And you don't know anything about an
4 alleged racial slur by Mr. Thompson?

5 A Tom Thompson, no, I do not.

6 Q What about, do you know a Gary Gebhardt?

7 A Yes.

8 Q Who is he?

9 A Gary Gebhardt was another line foreman,
10 supervisor, same level as Mr. Thompson.
11 He worked for me there.

12 Q Are you aware of any allegations of
13 racial slurs made by him?

14 A Yes. It would have been after the fact
15 of Dayved being there.

16 Q Okay. How were you made aware of that?
17 Did somebody complain directly to you
18 about that?

19 A No, quite honestly I heard it secondhand
20 that a slur or a comment was supposedly
21 made and then was involved in the

1 investigation as to what had actually
2 happened and all that.

3 Q But at the time, your position was -- you
4 were the manager of the die cast
5 division?

6 A Department, yes.

7 Q So directly under you would be the
8 foreman or line supervisors?

9 A No, there's one level in between Ron and
10 Rex were the shift supervisors and then
11 those line foremen would report to them.
12 Rex and Ron ran the actual shift on the
13 different shifts, first or second shift.

14 Q So is it fair to say they would be --
15 when I say they, I mean Ron Sayers and
16 Rex Ryan, they would be one step above
17 Gebhardt and Thompson?

18 A Yes, you're right.

19 Q If there were complaints about Gebhardt
20 and Thompson, who would an employee take
21 that complaint to?

1 A Well, it would be one of two people.
2 Some of the workers would go directly to
3 their union steward, or to their union
4 committeeman or they would go directly to
5 Ron or Rex, one or maybe both. They might
6 do it together.

7 Q Now, you testified that you had a few
8 meetings in regards to Mr. Woodard's job
9 assignments, but then you decided to
10 dismiss the claim, I think that's what
11 you testified to?

12 A Yes.

13 Q Was this a formal dismissal? Was there a
14 grievance filed? I mean how did you come
15 up with the determination?

16 A I'm not aware of any grievance that was
17 written at all. You're talking about a
18 union grievance?

19 Q Well, I'm asking there was a meeting.
20 Was it part of a union grievance?

21 A No, it was not, it was an informal thing.

1 Q Was a union member there?

2 A Yes.

3 Q Who was there for the union?

4 A Well, Dayved was in the union and then
5 Pat Camp was his steward at the time.

6 Q So it was brought by the union?

7 A Well, I guess so, if that's -- there
8 wasn't any written grievance.

9 Q Was there an agreement that this
10 complaint would be dismissed or did you
11 just -- I don't want to put words in your
12 mouth, but it sounded like you just
13 determined that there was nothing there?

14 A I investigated, trying to find something
15 that would back up Dayved's claim that
16 there's something substantial here that
17 it happened and I couldn't find anything
18 that would substantiate what Dayved was
19 claiming.

20 Q So you dismissed the complaints?

21 A Yes, at that point, I felt there wasn't

1 anything to it.

2 Q And you never told Mr. Woodard?

3 A That's correct. I said if I had anything
4 to do over again, I would go back to
5 Dayved and tell him that.

6 Q Did you tell the union or did it just
7 stop?

8 A It just stopped at that point.

9 Q Were you part of the EEOC investigation
10 in any way?

11 MS. PETERSEN: Which one?

12 BY MR. JOHNSON:

13 Q Mr. Woodard's?

14 A I'm not sure I understand what you're
15 asking me.

16 Q Did anyone from the EEOC talk to you in
17 regards to Mr. Woodard's complaints?

18 A I have to recall. I've spoken to the
19 EEOC on a couple of occasions. Probably
20 they did, yes, I think so.

21 Q But you're not aware of all these

1 incidents that we've talked about except
2 for the issue of the assignments?

3 A No, and the only other issue would be the
4 Gary Gebhardt issue that happened
5 afterward.

6 Q In the chain of command, shouldn't you
7 have gotten wind or news about these
8 complaints, for example, of the racial
9 slur being made?

10 A Well, that really depends. If a racial
11 slur or whatever would have happened, if
12 someone had felt strongly enough about
13 that and brought it up through the chain
14 of command, yes, I would have heard about
15 it, but Rex and Ron deal with a lot, as
16 shift supervisors, they deal with a lot
17 of issues day-to-day on the floor amongst
18 all of the people working there and there
19 is a lot of things that happen on the
20 floor that they take care of and it's not
21 necessarily racial issues or any of that

1 kind of thing, but all kinds of little
2 issues that happen that Ron and Rex deal
3 with and take care of that never got to
4 the level of the manager.

5 Q Is it fair to say then that Mr. Woodard
6 had complaints that he voiced to Ron
7 Sayers or Rex Ryan, you would not be
8 aware of them unless Mr. Sayers or Mr.
9 Ryan brought it to your attention?

10 A Or Dayved, right. If those two would not
11 have come to me about it, I probably
12 wouldn't have heard about it.

13 Q And your testimony is you didn't hear
14 about the racial slur?

15 A I'm sorry?

16 Q You didn't hear about the complaint about
17 racial slurs?

18 A Um-hmm.

19 Q You did not hear about that?

20 A No, no. If you're referring to anything
21 -- the only racial slur that I can

1 confirm that I heard was when Dayved
2 mentioned to me in our meeting about
3 someone using the "N" word.

4 Q So you're not aware or let me ask you
5 this, would you be aware of any
6 investigation that PHB would do on their
7 own in regards to allegations of racial
8 discrimination made by an employee?

9 A Well, if PHB had an investigation going,
10 I would only be aware of it if I had been
11 called into a meeting and told about it
12 or asked about it.

13 Q And that's true even though you were the
14 manager of the whole division?

15 A Of the department.

16 Q Of the department where this allegedly
17 took place?

18 A Well, yes. If there was a racial or
19 something happen on the floor, racial
20 slur or whatever, if the supervisor
21 didn't bring it to me or if the

1 particular employee or union didn't bring
2 it to me, I may not be aware of it.

3 MR. JOHNSON: That's all the
4 questions I have.

5 MS. PETERSEN: I just had a
6 couple questions.

7 * * *

8 **REDIRECT EXAMINATION**

9 BY MS. PETERSEN:

10 Q Were you at a meeting with Pat Camp, the
11 union representative, and Mr. Woodard and
12 I don't who else might have been there,
13 about -- it was discussed that Mr.
14 Woodard had to write a letter because he
15 had cracked some taps; do you remember
16 something like that?

17 A Yes.

18 Q What do you recall?

19 A I don't recall the job or the machine or
20 any of that, but --

21 Q First of all, why was it brought up, do

1 you know that?

2 A Yes. When an employee works at a machine
3 at our plant and in my department, if
4 something happens where an accident
5 happens where they may damage some
6 tooling or equipment or cause the job to
7 break down for a long period of time, or
8 even a short period of time, but it may
9 be costly breakdown, if what the employee
10 had done to cause that, sometimes, I'll
11 give you an example, they locate a
12 casting incorrectly in the tooling and
13 they cycle the machine and it damages the
14 tooling, that can be very costly, time
15 and money. So we want the employee to
16 understand what they did wrong and so as
17 a habit, we would ask them, I
18 particularly in my department, it had
19 been going on before me, but when I took
20 over, I carried it on, to ask the
21 employee to write a quick note. I ask

1 them to write them on whatever they have,
2 napkins, piece of cardboard, tablet
3 paper, didn't matter, just write it down
4 on a piece of paper the machine you were
5 on, what happened, yes, you know, and
6 then sign it. That was my way of
7 cementing in their mind that they
8 understood what they did wrong and to try
9 to prevent it from happening again.

10 Q This has happened every time something is
11 damaged?

12 A I'm not going to say every single time,
13 but I'm going to say for the vast
14 majority of time, yes.

15 Q What if the machine was only down for
16 like 15 minutes?

17 A I typically did not ask the employees to
18 write a letter or document it, if it was
19 a minor breakdown, because those things
20 happen often. But the more serious ones I
21 did ask them to do that.

1 Q Now, what was Mr. Woodard's complaint to
2 your understanding?

3 A My understanding was he didn't feel he
4 should have to do that.

5 Q Did he tell you why?

6 A I don't recall why, but it was just his
7 feeling, maybe it wasn't -- because it
8 wasn't a real costly breakdown. Taps
9 aren't real expensive in comparison to
10 big tooling dies and things.

11 Q What was your response or what was
12 discussed?

13 A If I recall correctly, we still asked
14 Dayved to write the letter regardless. We
15 wanted it documented so he understood
16 what he had done wrong.

17 Q And he had testified that the machine was
18 only down for about 15 minutes. Was it
19 then unreasonable for him to have to
20 write the letters since you just
21 testified that sometimes you don't have

1 to write the letter?

2 A Yes, I understand. My opinion was I
3 didn't feel it was unreasonable. All I
4 was asking for was just documentation of
5 what happened so they understood, Dayved
6 understood what he had done wrong, that's
7 all it was.

8 Q Have people been asked to write letters
9 where the machine was down for less than
10 15 minutes?

11 A I'd have to answer probably.

12 Q And this is something that's asked of all
13 types of employees?

14 A Yes, it wasn't just union employees, it
15 was salaried employees, also, I mean
16 supervision. If we had an issue with a
17 supervisor who made a mistake, I've asked
18 them to write them up, too.

19 Q And he did write the letter for his file?

20 A I don't recall if Dayved wrote it or not,
21 I honestly don't.

1 MS. PETERSEN: Okay, that's all
2 I have. Thank you.

3 THE JUDGE: Anything else,
4 Attorney Johnson?

5 * * *

6 **RECROSS-EXAMINATION**

7 BY MR. JOHNSON:

8 Q Would you have reviewed the letter that
9 Mr. Woodard would have written for the
10 file?

11 A Oh, absolutely. If he wrote it, I read
12 it.

13 Q So if he made an allegation that he
14 thought he was being treated differently
15 based on his race, would you have done
16 any investigation into that?

17 A Yes.

18 MR. JOHNSON: Nothing further.

19 THE JUDGE: You testified you've
20 been employed there 20 years; is
21 that correct?

1 THE WITNESS: Approximately,
2 yes.

3 THE JUDGE: And during that 20
4 years, you would have supervised
5 Mr. Gebhardt on occasion?

6 THE WITNESS: That's correct.

7 THE JUDGE: And to your
8 knowledge, Mr. Gebhardt was
9 terminated?

10 THE WITNESS: Yes, he was.

11 THE JUDGE: Did you know how
12 long Mr. Gebhardt had been an
13 employee at PHB?

14 THE WITNESS: Oh, I'm not
15 exactly sure. I think it's 28, 30
16 years, long time.

17 THE JUDGE: So he was employed
18 there longer than you had been?

19 THE WITNESS: Oh, absolutely,
20 yes.

21 THE JUDGE: And the incident

1 that caused him to be terminated
2 was an incident after Mr. Woodard
3 stopped working there?

4 THE WITNESS: Yes.

5 THE JUDGE: To your knowledge,
6 it was an isolated incident,
7 something like that had never
8 happened before involving Mr.
9 Gebhardt?

10 THE WITNESS: To my knowledge,
11 that's the only one that had
12 happened with Mr. Gebhardt, yes.

13 THE JUDGE: You don't know
14 whether Mr. Gebhardt had a history
15 of being discriminatory or making
16 racial comments?

17 THE WITNESS: I'm not aware of
18 that, no.

19 THE JUDGE: Are you aware of any
20 informal disciplinary actions taken
21 against Mr. Gebhardt in the past

1 regarding his behavior?

2 THE WITNESS: We had a layoff at
3 one time, salaried layoff, where
4 Mr. Gebhardt was laid off, but it
5 wasn't as far as his performance or
6 discriminatory policies or anything
7 like that. He was laid off for a
8 period of time as lack of work.

9 THE JUDGE: Did you find Mr.
10 Gebhardt to be a person that was
11 racially discriminatory against
12 other people?

13 THE WITNESS: I have never heard
14 him say anything discriminatory. I
15 was in the meeting with the EEOC
16 lady and talked to her, but I
17 wasn't in there when apparently
18 Gary made a remark that supposed he
19 was racist.

20 THE JUDGE: If there's no
21 history of Mr. Gebhardt acting in

1 that fashion, why did PHB fire Mr.
2 Gebhardt?

3 THE WITNESS: I can't answer
4 that. I did not make the decision
5 to fire him.

6 THE JUDGE: Were you not part of
7 the decision-making process with
8 regard to Mr. Gebhardt being fired?

9 THE WITNESS: No, I was not.

10 THE JUDGE: Would you have been
11 the plant engineer at the time Mr.
12 Gebhardt was terminated?

13 THE WITNESS: No.

14 THE JUDGE: You still would have
15 been the manager of the die cast
16 department?

17 THE WITNESS: That's correct.

18 THE JUDGE: You were not
19 involved in Mr. Gebhardt's
20 termination, even though he worked
21 in the die cast department?

1 THE WITNESS: I was called up to
2 Ben's office and told that Mr.
3 Gebhardt was going to be
4 terminated.

5 THE JUDGE: Can you tell me why
6 you chose not to report to Mr.
7 Woodard or to the union the results
8 of your investigation regarding job
9 assignments that Mr. Woodard
10 received, considering you had a
11 meeting with the union called in
12 and everything?

13 THE WITNESS: As I testified
14 earlier, that was poor judgment on
15 my part to not go back to Dayved
16 and tell him. That was a mistake on
17 my part.

18 THE JUDGE: Were there any
19 reports generated as a result of
20 that meeting?

21 THE WITNESS: I had a habit of

1 writing myself notes whenever I had
2 meetings and personnel-type
3 meetings like that, when I meet
4 with an employee, I go into the
5 computer, I type up a couple
6 sentences, I put the date, who was
7 there, and I document those.

8 THE JUDGE: And your testimony
9 is during the 20 years you've been
10 employed here, you never had an
11 occasion to overhear a racial slur?

12 THE WITNESS: No, I have not.

13 THE JUDGE: PHB, I understand to
14 be what I would consider like a
15 factory?

16 THE WITNESS: Um-hmm, factory,
17 um-hmm.

18 THE JUDGE: And employees that
19 usually work in factories tend to
20 be crude, would you not agree?

21 THE WITNESS: I would agree.

THE JUDGE: And during the 20 years, you never came across anybody whether you heard them specifically -- I guess my question is not did you hear "X" say this, but did you as you're walking through hear people use inappropriate language, perhaps racial slurs?

THE WITNESS: No, you described it very well. In my walking through the plant, I never heard that, never heard someone say something directly racial, but secondhand and third-hand, yes. You hear that all the time, somebody said this, somebody said that, not all the time, I shouldn't say that, occasionally.

THE JUDGE: Was any investigation done into those

1 secondhand comments that you may
2 have heard?

3 THE WITNESS: Not that I'm aware
4 of.

5 THE JUDGE: And to the best of
6 your knowledge, during the time
7 that you managed the die cast
8 department, including Mr. Woodard
9 or any other employee, nobody came
10 to you with complaints with regard
11 to racial discrimination?

12 THE WITNESS: No.

13 THE JUDGE: Thank you. Any
14 follow-up, Attorney Petersen?

15 MS. PETERSEN: Nothing.

16 THE JUDGE: Attorney Johnson.

17 MR. JOHNSON: Just two or
18 three, your Honor.

19 BY MR. JOHNSON:

20 Q Were you aware of any other lawsuits that
21 were filed against PHB based on

1 discrimination?

2 A Well, I'm aware of a lawsuit about an
3 employee named Fred Jackson, but I don't
4 know if that was discrimination case or
5 not.

6 MR. JOHNSON: Nothing further.

7 THE JUDGE: You may step down.

8 And your other witnesses that you
9 have out there --

10 MS. PETERSEN: I have Pat Camp
11 and Rod Berry, they're still out
12 there.

13 THE JUDGE: And Rod Berry is
14 whom?

15 MS. PETERSEN: He is the
16 janitor.

17 THE JUDGE: And his testimony
18 would be brief, I assume?

19 MS. PETERSEN: Five minutes.

20 THE JUDGE: All right, let's do
21 Mr. Berry.

1 MR. PETERSEN: Okay.

2 THE JUDGE: And Mr. Camp's
3 testimony?

4 MS. PETERSEN: He may be a
5 little bit more because he was the
6 union steward. Can we take him by
7 depo?

8 THE JUDGE: Any objection to
9 doing it by deposition?

10 MR. JOHNSON: No objection. We
11 can do it when we do Mr.
12 Goodwine's.

13 THE JUDGE: That's fine. Please
14 come forward. Raise your right
15 hand. Please have a seat in the
16 witness stand to my left. Attorney
17 Petersen, you may proceed with his
18 testimony.

19 MS. PETERSEN: Thank you.

20 * * *

1 **RODNEY BERRY,**

2 called as a witness on behalf of the
3 Employer, and having been previously
4 duly sworn, was examined and testified
5 as follows:

6 **DIRECT EXAMINATION**

7 BY MS. PETERSEN:

8 Q Would you please state your name for the
9 record.

10 A Rodney Berry.

11 Q Is that B-e-r-r-y?

12 A Right.

13 Q And you're employed by PHB currently?

14 A Yes.

15 Q What is your job there?

16 A Janitor.

17 Q And how long have you been janitor at
18 PHB?

19 A Almost 15 years.

20 Q And is that also the length of time you
21 were employed by PHB?

1 A Yes.

2 Q Now, during your employment at PHB, did
3 you ever have occasion to see a picture
4 of a burning cross or a KKK in the
5 restrooms at PHB?

6 A Yes, I did, one time.

7 Q Actually, let me back up. You're
8 responsible for cleaning the restrooms at
9 PHB; correct?

10 A Yes.

11 Q How often do you do that?

12 A Every day.

13 Q And going back to my question, did you
14 have occasion to see a picture of a
15 burning cross with a KKK in the bathroom?

16 A Yes.

17 Q Do you remember when this occurred?

18 A The best I can remember is when one of
19 our bosses who retired, Mr. Jack
20 Spaulding, because I used to go get him
21 to look at the stuff if there was a

1 problem. We had some incredible messes in
2 there and he used to come take pictures
3 or something, come take a picture of it
4 and --

5 Q Can you give us a timeframe of the last
6 five years?

7 A Late nineties, probably.

8 Q Okay. And exactly what did you see?

9 A There was a, I remember a cross about
10 this tall, about --

11 THE JUDGE: What's the
12 dimensions? Can you describe it
13 verbally?

14 THE WITNESS: Probably about
15 maybe one-and-a-half feet high and
16 a little over a foot wide probably.

17 BY MS. PETERSEN:

18 Q Do you know if it was in pen or marker,
19 can you recall?

20 A Marker.

21 Q And that was the cross?

1 A It was a burning cross and I remember
2 seeing KKK on there.

3 Q And do you recall how long it was there?

4 A If I didn't get rid of it that day, it
5 was gone by the next day because I had to
6 wait until they took a picture or
7 whatever and then our restrooms are kind
8 of busy, so I'd wait until I got a chance
9 to go paint over that, there might be
10 somebody in there. If I didn't get it
11 gone that day, it was gone the next day.

12 This is in our large --

13 Q How did you remove it or what did you do?

14 A Spray paint.

15 Q What were you going to say?

16 A This was in our large men's room, there's
17 like ten stalls in there.

18 Q Was it in one of the stalls or was it --

19 A One of the stalls on the wall.

20 Q And you said it was there for only at the
21 most two days?

1 A Yes, now, like I said, this is a long
2 time ago, it's possible when I saw it, I
3 have vacation time and sometimes I'm off
4 for a week, maybe two weeks. It could
5 have been at a time when I had just come
6 back from vacation and that, I don't
7 remember.

8 Q Okay.

9 A I just basically went in there and saw it
10 the one day and I got it taken care of.

11 Q What's the longest amount of time you
12 were away on vacation or had the time
13 off?

14 A Two weeks is the longest.

15 Q So two weeks would have been the longest
16 that the drawing would have been on the
17 wall?

18 A Yes.

19 Q Was it possible that it had been there
20 for months?

21 A No, not possible.

1 Q You spray-painted it over?

2 A Yes.

3 Q Did it return? Did another drawing
4 return?

5 A I've never seen it since.

6 Q Was there any other type of racial
7 comments or slurs on the bathroom walls
8 that you noticed over the years?

9 A No. At the same time that was on there,
10 there was another stall two stalls down,
11 someone had black power written on there.

12 Q Did that go?

13 A I painted over that, too. Most of the
14 stuff is like one person against another
15 person and I've had them to the point
16 where the last number of years, you
17 hardly ever see anything on the walls
18 anymore. This morning I painted two
19 small things. It's the first time I've
20 had to paint over in the last -- I don't
21 know.

1 Q What were these small things about?

2 A I don't read them.

3 Q Was there any indication of a burning
4 cross and the KKK that you saw, was that
5 directed to Mr. Woodard?

6 A No.

7 Q Are you familiar with Mr. Woodard?

8 A Yes, he's worked for me when I was on
9 light duty or something, he was helping
10 me out for a while.

11 Q So you know him personally then?

12 A Yes.

13 Q You've had occasion to talk to him when
14 he worked there?

15 A Right.

16 Q Now, did people, did they ever approach
17 you if they saw something in the
18 bathrooms they didn't like?

19 A Sometimes somebody would tell me there
20 was something written about somebody and
21 cover it up.

1 Q And would you comply?

2 A Right, yes.

3 Q Did Mr. Woodard ever approach you to tell
4 you there was something in the bathroom
5 that he didn't like?

6 A No.

7 Q Do you recall who told you about the
8 cross in the bathroom, if anybody?

9 A Nobody told me.

10 Q You saw it for yourself?

11 A Yes.

12 Q Then what did you do after you saw that?
13 did you tell anybody else?

14 A The way I remember, I went and told Jack
15 Spaulding, who was in charge of all the
16 die cast departments. That's when I did
17 when I had a problem, then he would go
18 take a picture or when he got a chance to
19 do that and then he told me it was taken
20 care of and to go and cover it up.

21 Q Did you ever see any writing or

1 derogatory comments or racist comments
2 about Mr. Woodard in the bathroom?

3 A Generally, I don't take time to read the
4 stuff, you know, sometimes once in a
5 while maybe I will, but generally, I'll
6 paint it over.

7 Q And you were the only janitor during the
8 15 years you were employed there?

9 A No.

10 Q Who else was janitor?

11 A Ernie McIntyre (phonetic).

12 Q When was he working there?

13 A Probably the first three years I was
14 there, he was on first shift and I was on
15 second.

16 Q So for the past 12 years, you have been
17 the only janitor at PHB?

18 A Right.

19 MS. PETERSEN: That's all I
20 have. Thank you.

21 THE JUDGE: Cross.

1 MR. JOHNSON: Thank you.

2 * * *

3 **CROSS-EXAMINATION**

4 BY MR. JOHNSON:

5 Q In regards to seeing graffiti in the
6 bathroom in terms of the KKK sign or a
7 burning cross, your testimony is that
8 only happened once?

9 A That I --

10 Q That you're aware of?

11 A That I'm aware of.

12 Q Could it have happened on more than one
13 occasion?

14 A I never saw it. If it did happen, then
15 somebody else would have had to have
16 covered it over.

17 Q And when to the best of your
18 recollection, when did this occur?

19 A Like I said, it was when Jack Spaulding
20 was still there, so he left sometime in
21 the late nineties, '97, '98, somewhere

1 around there.

2 Q Did you ever receive a complaint from
3 Butch Smith stating that Mr. Woodard was
4 complaining about graffiti in the
5 bathrooms?

6 A No.

7 Q Did anyone ever tell you to go remove or
8 paint over any discriminatory graffiti in
9 the bathroom?

10 A Just things about them personally, not --
11 just like somebody telling me something
12 wrote something about me and some girl.

13 Q All right, so you're not aware -- let me
14 ask you this, did you ever hear a
15 complaint made by Dayved Woodard that
16 there was graffiti of a discriminatory
17 nature in the bathroom for a period of
18 weeks?

19 A No.

20 Q Are you hearing this for the first time
21 when I'm saying it to you?

1 A I've been to a couple hearings at work
2 where I was told there was supposed to
3 have been a burning cross on the wall --
4 not in the restroom that I saw it, but in
5 another restroom over by our 1000-ton two
6 machine, small, like a one-man restroom,
7 I was told that was on the wall there and
8 I never saw it there. That's generally a
9 restroom where people write little things
10 occasionally, they cover it up
11 themselves. The only thing I ever saw
12 really bad in there, one time there was a
13 drawing of a person who was about this
14 high --

15 MR. PETERSEN: How high is that?

16 THE WITNESS: Probably about six
17 feet, about life-size, and I went
18 and told Ben and he came down and
19 looked at it and the restroom was
20 painted after that. Other than
21 that, it's something like little

1 things about the foremen or
2 something like that, they all cover
3 it up themselves.

4 BY MR. JOHNSON:

5 Q But you did hear about this?

6 A Yes.

7 Q Who told you about it?

8 A I was told just in the hearings.

9 Q What kind of hearings?

10 A I don't actually know. I was just
11 brought in, Ben was there, our lawyer.

12 Q Who was your lawyer at that hearing?

13 A Mr. Zamboni (phonetic). And I talked to
14 him the one time, they brought me in and
15 asked me about it and then there was a
16 second time, there was a woman, she
17 represented somebody, I don't know, I
18 took her into the restroom and showed
19 her.

20 Q What did you show her?

21 A There was a couple little things written

1 on the wall.

2 Q Was there a burning cross and KKK sign?

3 A No.

4 Q But that wasn't a restroom that you
5 regularly went into or cleaned; is that
6 fair?

7 A Right.

8 Q Okay. So there could have been a cross
9 and a KKK there for a few weeks without
10 you knowing about it?

11 A I would have noticed something like that.

12 THE JUDGE: Let's back up. Do
13 you clean that bathroom?

14 THE WITNESS: Yes.

15 THE JUDGE: And do you clean it
16 every day?

17 THE WITNESS: Yes.

18 THE JUDGE: Because one of the
19 questions he asked you, is that a
20 bathroom that you do not regularly
21 clean and you said yes.

1 THE WITNESS: I didn't hear him.

2 THE JUDGE: You didn't hear him.

3 So just to make sure we understand
4 your testimony, that is a restroom
5 that you regularly go into?

6 THE WITNESS: Yes, every day.

7 THE JUDGE: You may continue.

8 BY MR. JOHNSON:

9 Q And you've never observed any graffiti in
10 this restroom that we're talking about?

11 A No.

12 Q And this is a one-stall restroom?

13 A I never observed the burning cross or
14 KKK.

15 Q And it is your testimony that you clean
16 that bathroom every day?

17 A Yes.

18 Q Do you agree that there were complaints
19 made by Mr. Woodard in regards to the
20 letters KKK and a burning cross?

21 A From what I was told at these hearings,

1 that's it.

2 Q And you never received any direction from
3 any of your supervisors telling you to
4 paint over any racially derogatory
5 pictures?

6 A No. If they had, no one was there, they
7 would have told me.

8 MR. JOHNSON: That's all the
9 questions I have.

10 MS. PETERSEN: Nothing further.

11 THE JUDGE: During the 15 years
12 that you have been employed there
13 as a janitor, have you had occasion
14 to overhear any racial slurs or
15 racial comments while on the work
16 floor doing your job?

17 THE WITNESS: If I've heard
18 anything, it's just in joking, when
19 they were with each other, people
20 of different races just -- but I
21 don't see it there.

1 THE JUDGE: So you have heard
2 racial slurs, but you thought it
3 was in a joking environment?

4 THE WITNESS: Yes, both ways.

5 THE JUDGE: You don't --

6 THE WITNESS: Just people,
7 they're friends, they get along.

8 THE JUDGE: In your opinion,
9 there's never any racial slurs made
10 in a malicious way?

11 THE WITNESS: I'm not saying
12 that it's not there, but it's not
13 that I've seen. I'm by myself most
14 of the time.

15 THE JUDGE: Actually you're like
16 a fly on the wall, so you could
17 hear things that other people may
18 not hear so that's why I'm asking
19 you that. Are there racial slurs
20 being tossed around back and forth
21 and maybe nonchalantly or maybe

1 maliciously?

2 THE WITNESS: No.

3 THE JUDGE: Thank you. Any
4 follow-up, Attorney Petersen?

5 MS. PETERSEN: Nothing further.

6 THE JUDGE: Attorney Johnson?

7 MR. JOHNSON: No, your Honor.

8 THE JUDGE: Thank you, Mr.
9 Berry. You may step down and
10 you're free to go.

11 All right, you can complete the
12 rest of the lay testimony in this
13 matter by deposition. This record
14 will close out by mail.

15 Independent psychological
16 evaluation, has one been scheduled?

17 MS. PETERSEN: No, your Honor.
18 I don't know if it was discussed at
19 one of the prior hearings. Mr.
20 Gaughan had told me he had
21 requested that it be bifurcated.

1 Do you know anything about that at
2 all?

3 THE JUDGE: Bifurcate what?

4 MS. PETERSEN: The abnormal
5 working conditions issue from the
6 medical issue.

7 THE JUDGE: I don't have any
8 notes that I was going to
9 bifurcate. I don't want to
10 misspeak. Maybe I did, but I
11 normally write that stuff down.

12 MS. PETERSEN: I didn't see it
13 in the transcript.

14 THE JUDGE: Attorney Johnson has
15 been here for the last two hearings

16 --

17 MR. JOHNSON: Unless it
18 occurred at the first hearing when
19 Mr. Connelly was still representing
20 Mr. Woodard, I didn't see anything
21 in the original transcript either.

THE JUDGE: You know what, I
don't know I would bifurcate that
issue because how can I bifurcate
-- I don't know. I guess you're
asking me to factually bifurcate
whether those factual events truly
occurred and if they truly
occurred, do they rise to the level
of an abnormal working condition.

MS. PETERSEN: Correct.

THE JUDGE: If I find that it is
an abnormal working condition --

MS. PETERSEN: Then we continue

with medical.

THE JUDGE: Why would you

continue with medical?

MS. PETERSEN: If you said --

oh, you said if it is or is not?

THE JUDGE: If it isn't an

abnormal working condition and he did experience what he did

experience, why would you -- then
you're going to say, well, that may
have happened, but he didn't have a
psychological episode as a result
of it? I mean so why would I
bifurcate I guess is the point.
You all can discuss it amongst
yourselves if you want. The only
reason to bifurcate would be to
save the money of not depositing
experts in this matter and going
down the road of presenting medical
evidence that he, in fact, has
whatever condition he has and I'm
not sure there's been a diagnosis
attached to his -- what he
described as rage.

18 MS. PETERSEN: I think that
19 might be a separate issue and
20 whether he was subjected to
21 abnormal working conditions, even

1 if he was, whether he suffered from
2 some type of mental illness, you
3 know, that's diagnosed by a
4 psychological or psychiatric
5 expert.

6 THE JUDGE: My gut reaction is
7 not to bifurcate.

8 MS. PETERSEN: So we proceed
9 with our independent exam?

10 THE JUDGE: You know what,
11 review the transcript. If I said I
12 would bifurcate and we've had this
13 discussion, I'll reconsider, but I
14 don't recall having a discussion to
15 bifurcate and usually I'm the one
16 that mentions bifurcations because
17 I like to bifurcate, I just can't
18 see doing it in this case because
19 there's a lot of abnormal working
20 conditions that involve perceptions
21 and those types of things that

1 really comes in through medical
2 evidence.

3 MS. PETERSEN: So it's up to
4 you.

5 THE JUDGE: I would not
6 bifurcate. But my point is if I did
7 say I would bifurcate, I just don't
8 remember and let me know and I'll
9 reconsider.

10 MS. PETERSEN: I didn't see it
11 discussed during the transcript,
12 but I wasn't sure if it was
13 discussed off the record or
14 anything like that. But you're
15 saying you don't --

16 THE JUDGE: I don't feel
17 comfortable bifurcating. You all
18 have to stipulate to the
19 bifurcation before I'd even
20 consider it. I don't think you
21 guys have really talked about it,

1 so you probably need to talk about
2 it before you make that request to
3 me and that's a call on your part
4 and if you guys discuss it amongst
5 yourselves and you think
6 bifurcation is the approach you all
7 would like to follow, then you make
8 the request to me and then I'll
9 grant it or deny it. That's the
10 action with regard to that.

11 MS. PETERSEN: We will proceed
12 with depositions.

13 THE JUDGE: Do depositions and
14 I'm going to assume we are not
15 bifurcating because I've not made a
16 decision to bifurcate, so you do
17 your depositions of the lay
18 witnesses, you move forward and you
19 have your independent medical or
20 independent psychological
21 examination of the claimant,

1 claimant deposes their expert, then
2 you depose your expert. I'm
3 thinking we are now towards the end
4 of January. I would think that the
5 two witnesses, Mr. Goodwine and Mr.
6 Camp, are lay witnesses and they
7 should be readily available, that
8 you should be able to complete lay
9 depositions during the month of
10 February, independent medical
11 examination has to be completed by
12 the end of March, claimant has to
13 depose their expert by the end of
14 April, employer deposes their
15 expert by the end of May, record
16 closes July 29th. By July 29th, I
17 need to receive deposition
18 transcripts, bill of costs on
19 behalf of the claimant, itemization
20 of legal services on behalf of the
21 claimant, and briefs from the

1 parties.

2 Anything else on behalf of the
3 claimant today?

4 MR. JOHNSON: Nothing, your
5 Honor.

6 THE JUDGE: The employer?

7 MS. PETERSEN: Nothing.

8 THE JUDGE: All right, counsel,
9 thank you.

10 MR. JOHNSON: Thank you, your
11 Honor.

12 MS. PETERSEN: Thank you, Judge.
13 (Whereupon, the hearing was concluded.)

14
15 * * * * *

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20
21

DAYVED WOODARD

VS

PHB

VS

ROYAL & SUN ALLIANCE

C E R T I F I C A T I O N

I, LYNN R. MURRAY, do hereby certify that to the best of my knowledge, the proceedings and evidence are contained fully and accurately in the record taken by me of the hearing in the above-entitled matter, and that this is a true and correct transcript of the same.

5-23-05

DATE



LYNN R. MURRAY, COURT REPORTER